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GEOGRAPHY AND FOREIGN POLICY, II

NICHOLAS J. SPYKMAN
Yale University

In the first part of this article, we analyzed the effect of size and world location on the international relations of states and the problems of foreign policy. But more immediate in its conditioning effect is regional location—location viewed with reference to the immediate vicinity.

Like world location, regional location is a question of facts plus the significance of those facts at any given historical period. Just as it was found necessary to consider world location in relation to two systems of reference, the geographic and the historical, so the full meaning of regional location becomes apparent only after considering both the geography and the historical and political significance of a state's immediate surroundings.

Regional location determines whether neighbors will be many or few, strong or weak, and the topography of the region conditions the direction and nature of contact with those neighbors. The man who once formulated the foreign policy of Manchuria had to do so with one eye on Japan and the other on Russia; every international gesture of Belgium is conditioned by the fact that she lies between France and Germany and across the Channel from Great Britain; and the states of Central America can never for a moment forget that the territory north of them is occupied by one large power and not by several whom they might play off one against the other as their European counterparts, the Balkan states, have been able to do from time to time with their northern neighbors. Two of the traditional and unchanging cornerstones of United States foreign policy have been isolation from all European affairs and that oft-quoted and oftener misquoted principle known as the Monroe Doctrine. Each of these policies is tenable only in view of the fact

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that the European neighbors of the United States are three thousand miles away. If the United States had been as near to the European continent as is Great Britain, it could never have conceived a policy of isolation, to say nothing of maintaining it; and if most of South America had been as near to Europe as is Africa, the United States could not have prevented the European powers from colonizing South America as they have colonized Africa.

A consideration of geographic environment alone suggests three main types of regional location—landlocked states, all of whose frontiers are land frontiers, island states, all of whose frontiers are seacoast, and a third group, much larger than the two preceding, states which have both land and sea frontiers. The significance of such location, however, will vary according to the political constellation of the moment and according to whether a state is situated between states of equal, greater, or less power than its own.

There have always been comparatively few landlocked states. Today there are three in Europe, two in Asia, and two in South America, and others like Ethiopia and Serbia have only recently disappeared from the map. The outstanding characteristic of the foreign policy of all such states is that their security problem is defined exclusively in terms of land defense, and therefore in terms of immediate neighbors. States with sea access are under pressure from any strong naval power, even one far away. It is true that distance increases the difficulty of effective invasion, but it does not greatly hamper the possibilities of bombardment. Whether this advantage of landlocked states will remain under the new conditions of aërial warfare will depend on whether neighbor states will be able to perform their neutral duty and prevent the crossing of enemy bombers. The lesson of the Spanish civil war does not inspire a great deal of confidence in regard to the future.

In most landlocked states, nature has contributed to defense. Hungary and Czechoslovakia, in their present form, are of too recent origin to serve as evidence; it certainly seems safe to presume that their boundaries are not wholly fixed; but almost every landlocked state that has long endured as such has been separated from the rest of the world by natural barriers like the mountains of Switzerland and Ethiopia, the mountains and jungles of Bolivia and Paraguay, or the plateau of Thibet. These states have enjoyed greater isolation than even the island states; because of their difficult topography, communication and transportation routes

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have passed them by; and they have been developed and preserved as separate entities.

Because of the obvious disadvantages of a landlocked location, it seems permissible to conclude that such a position is not a normal one unless nature has created virtually insurmountable frontiers. Otherwise, if the state is strong enough, it will eventually force its way to the sea as did Serbia, and as Bolivia and Paraguay are still trying to do; or, if it is weak, it will be absorbed or partitioned by its neighbors as were Arcadia, Armenia, Transylvania, and Ethiopia. Czechoslovakia and Hungary may well verify this hypothesis within the next few decades.

There are as few island states as landlocked states—only two great powers, Great Britain and Japan, the Dominions of Australia and New Zealand, the newly created Philippine Republic, and the infant American states of Cuba, Puerto Rico, Santo Domingo, and Haiti, the latter two being not quite island states because they share one island together. History adds to the list one important state, Crete, and the two minor nations of Hawaii and Samoa.

Until the development of the aëroplane, the defense problem of island states was exclusively a question of the maintenance of a navy. They were strategically secure as long as navigation remained in an undeveloped stage, and, later, as long as they maintained naval supremacy. In comparison with their Continental neighbors, Great Britain and Japan have very rarely been invaded. Island states situated near the mainland have nevertheless a defense problem totally different from that of states whose ocean barrier is wide. Invasion from the opposite coast is a constant menace, and they must therefore maintain a naval force adequate to repel any attack, or themselves establish control over the opposite coast.

There are certain striking similarities in the regional location of Great Britain and Japan on the opposite ends of the Eurasian mainland, and therefore certain striking similarities in their basic strategic problems. Both are island groups a short distance from a mainland and in a position by means of naval supremacy to control the access to the ocean of that opposite coast. But they are also under constant threat from that same opposite coast should it become the seat of powerful military units. Great Britain long found security in actual occupation of considerable mainland territory; later she was satisfied with bridgeheads; and she finally

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solved her problem by the creation and maintenance of the small buffer states, Holland and Belgium, and the policy of preserving a balance between the large Continental powers.

Japan's preoccupation with the mainland came much later, partly because her topography turned her away from the mainland during the period of primitive sailing technique, and partly because for a long time there was no political unit on the coast to present a positive threat. When during the last decade of the nineteenth century Russia began to push southward in search of ice-free ports and threatened to obtain control over Manchuria and Korea, and when during that same period China began its first attempt at westernization and therefore at the process which had made Japan strong, there was foreshadowed a situation which would have morphological similarities with the position of Great Britain in the fourteenth and sixteenth centuries.

The Japanese military mind, which does its international thinking primarily in strategic terms, seems determined to try to solve its problem by creating artificially the British type of location of the nineteenth century. North China is to serve as Belgium, and Manchukuo as Holland, and the latter, in order to fulfill its function effectively, should eventually be enlarged by the Maritime Provinces of the U.S.S.R.

The interesting question which arises in connection with this attempt, inspired by the basic pattern of British foreign policy, is whether the problem has been viewed correctly in terms of relative historical time. The European units which serve as buffer states were created before the growth of modern nationalism; the Far Eastern ones are being created after the consciousness of national unity with China is fully operative. Will they develop a consciousness of national difference and a nationality of their own? If not, they must remain under permanent military control at great economic expense. This is perhaps necessary anyway in order that Japan may realize other than purely strategic objectives, but, whatever modification these other factors may introduce, it would not be surprising if the Far East had entered upon a struggle comparable to the Hundred Years' War.

Therefore, unless island states are widely separated from the mainland—and there are today no states so located—their insularity no longer provides them the almost perfect defense it once offered. They share with landlocked states the advantage of

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having to maintain but one type of defense, and they share the partial protection offered by natural barriers, without sharing the isolation and resulting economic and social disadvantages caused by land barriers. If they are weak, they tend to be conquered, or at least to be controlled, by some great power, as has befallen most of the islands of the world. If, however, they are sufficiently strong to establish and maintain their independence for a time, then their location tends to give them commercial advantages and a naval strength that eventually raises them to the rank of first-class powers.

The great majority of the states of the world have both sea and land frontiers. Unless the frontier consists of a wholly insurmountable natural barrier, or the coast is always frozen and hence inaccessible to enemy approach, these states must maintain both land and sea forces. Whether a state's primary defense problem will be military or naval, and whether its contacts will be chiefly from overseas or across its land frontiers, will depend on various factors such as the length of its frontiers, its world and regional location, and its topography and climate.

The existence of good harbors will naturally favor the development of shipping and naval activity, whereas a coast that offers no such facilities will encourage contacts by land rather than by sea. The best coast-line for commercial development is an irregular, indented one with many offshore islands; whether it is mountainous or flat is of little importance provided it has good harbors. The Phoenician cities, jeopardized by Babylonian, Hittite, and Assyrian attacks from the hinterland, found relative security along the Lebanon littoral near enough to the piedmont road to participate in trade and remote enough to be secure. The Phoenician shore had good harbors, and the Lebanons produced cedars for the Phoenician fleet but little else to encourage an agricultural life. Phoenicia became, therefore, the leading sea-power of the period, in sharp contrast to its neighbors, the Jews, whose broad strip of fertile country and harborless coast early made them an agricultural inland people. The Aegean, with its countless harbors, inlets, and islands, is ideally suited to promote maritime enterprise, and produced a succession of early sea powers; and the irregular mountain coasts of Norway, Dalmatia, South China, and the Rhio peninsula are responsible for the sea prowess of their inhabitants. The north shore of the English Channel, which with its

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many magnificent harbors virtually compels its own people to seek their fortune on the sea and the rest of the world to use its ports, contrasts sharply with the southern shore, where, with the exception of Havre, France has had to spend much time and money in an only moderately successful effort to create harbors where nature failed to create them. In the same way, the eastern shore of the Adriatic abounds in good harbors while the eastern Italian coast is almost entirely harborless.

Seamanship and interest in the sea, however, do not develop merely when a country has good harbors and a good coast-line; there must also be a desirable and not too distant opposite coast, or, better yet, desirable offshore islands. Lands without such an opposite coast have remained consistently backward in seamanship regardless of the existence of favorable coast-lines. Africa, Australia, South America, and even North America with the exception of the Gulf of Mexico, are cases in point. On the other hand, Norway, Holland, Greece, South China, and the South Seas, with islands and opposite coasts to lure their inhabitants seaward, have produced the greatest seamen in history.

It appears, then, that, important as topography and climate may be in the development of seamanship, it is probably regional location that is the final determinant of sea interest. Greece was a transit land between two seas. Phoenicia, and later Genoa and Venice, were entrepôts for the reception and reshipment of goods to and from the East. Venice, situated on sheltered lagoons, and draining the fertile plains just behind her and the valleys of the Brenta, the Po, and the Adige, including the Tyrol, was the point of transfer for goods going south across the Apennines to Rome and down the Adriatic to the eastern Mediterranean. She had the added good fortune to escape the Arab raids which harassed Genoa, although she was constantly annoyed by pirates on the Dalmatian coast. That she should later yield her place to Marseilles as the first of the Mediterranean ports was inevitable as civilization moved northwestward, for the route from Marseilles runs up the Rhone valley into the watershed of the Channel and the North Sea, and thus into the heart of modern industrial Europe.

Not only the configuration of its sea frontier but also that of its land frontier will predetermine the relative importance of a state's land and sea activities. If, like those of Norway, Chile, and Spain, for example, its land frontier is a practically impassable mountain

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range, the state will naturally establish its contacts by sea. If, like France and Germany, it can move as easily across its land as across its sea frontiers, it will have the commercial advantage of added trade and communication routes but an added problem of defense. If, like that of Russia, its sea-coast offers no easy access to the open ocean, it will tend to take its place among the land powers of the world in spite of many miles of coast-line.

The early history of political organization exhibits a great number of narrow coastal states of different geographic types, states located in small coastal valleys like Athens, river delta states like Egypt, and coastal border states like Phoenicia.[1]

These examples of narrow coastal states—and they by no means exhaust the list—have almost all been drawn from ancient and medieval, or, at the latest, early modern history. They represent an archaic type because such states either expand into the hinterland and obtain depth, or are swallowed up by inland states seeking access to the sea. Where similar types exist today, they are on a larger scale and have been preserved either by topography or because of their function as buffer states. Peru and Chile are guarded by their mountain frontiers, and Holland and Belgium exist under the protection of Great Britain. Ecuador is an independent entity because there is no state in her hinterland reaching toward the sea, and Uruguay earns her right to existence by functioning as a buffer between Brazil and Argentina. The tiny African state of Liberia survives as a sort of protectorate of the Great Powers, and Portugal has for a long time subordinated her foreign policy to that of her ally, Great Britain. The fate of newly-created coastal states like Albania, and the three Baltic states of Latvia, Lithuania, and Estonia, is still to be determined, but to the geographer they appear as distinct anachronisms in the evolution of geographic state types, and it is hard for any student of history to study a map of Europe without a strong conviction that Russia

[1] Coastal Valley Type: Argos, Colchis, Valencia, Naples, etc.
River Delta Type: Pegu, Cochinchina, Siam, Tonkin, Florence, etc.
Coastal Border Type: Cilicia, Etruria, Latium, Mauretania and Numidia; later, the territories of the Suevi and Cantabrians on the Iberian peninsula and the Vandals in northern Africa; at the time of the Crusades, Lesser Armenia, the principality of Antioch, the county of Tripoli, the kingdom of Jerusalem, and Trebizond in the Near East, and Normandy, Brittany and Frisia in Europe; still later, Dalmatia, Granada, Aragon, Portugal, and Genoa on the Mediterranean. Cf. Otto Maull, *Politische Geographie* (Berlin, 1925), pp. 213–214, and Josef März, *Die Ozeane* (Breslau, 1931), pp. 15–16.

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will some day force her way to the Baltic and swallow them a second time.

The states mentioned share with a few larger states like Argentina, Brazil, Venezuela, Rumania, and Persia the condition of having access to but one sea. Such a situation simplifies the problem of naval defense in that it permits a concentration of naval effectives denied to countries with more than one ocean front. But in the case of Rumania and Bulgaria it is a distinct disadvantage, since their one sea provides them no outlet to the open ocean and they are at the mercy of the power or powers controlling the Straits.

States like France and Spain which have more than one seacoast, and especially like the United States, Canada, and Russia, whose coasts are widely separated, have theoretically the most difficult of defense problems, since they must maintain not only land forces but two or more fleets. This double sea access in addition to the possession of a land frontier may also create important shifts in the main direction of expansion. During the seventeenth and eighteenth centuries, and even into the beginning of the nineteenth, when France had extensive colonies on the North American continent, she attempted to establish herself as an Atlantic sea power, but with the loss of her important American colonies she transferred her naval activity chiefly to the Mediterranean, where it is absolutely essential that she retain control of the routes between the mainland and her North African colonies. However, her approach to West Africa has been continental rather than maritime; and as long as there is a first-class power east of the Rhine, and as long as her eastern land frontier remains her most vulnerable point, France will be primarily a land power, thinking in terms of land attack and land defense.

Germany has always been in a difficult strategic position. She is open to attack by land on her eastern and western frontiers, and Great Britain can bar her access to the open ocean by closing the Channel and the North Sea. During the first fifteen years of her existence after 1871, Germany made no attempt to develop sea power and concentrated all her energies on her land forces. During the next thirty years, she hesitated between a continental and a maritime orientation, attempting to establish herself as a sea power without sacrificing her dominating position on the Continent. Unable during the World War to withstand simultaneous

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attacks from land, sea, and sky, she lost her supremacy on all fronts, and was completely deprived of her army, navy, and air forces. She is now re-creating all three branches of her defense, but has limited her navy by treaty to thirty-five per cent of the tonnage of the British navy, which indicates that for the present the continental orientation advocated in *Mein Kampf*[2] is the watchword of her foreign policy. It is interesting to realize that during the last seven centuries the coast-line of Germany has grown constantly shorter, as the following table rather strikingly reveals:

Year	*Length of coast-line*
1240	5100 kilometers of coast-line
1370	3700
1850	2400
1900	1355 (without colonies)
1925	1120[3]

At first glance, Italy seems definitely destined for a sea power, as indeed she is if she is to have access to the open seas and thus to foreign sources of supplies which she very much needs. Her land frontier is not as well protected by nature, however, as it might at first appear, and she is not free to think entirely in terms of naval defense. During the period of the Triple Alliance, she solved the problem by allying herself with her most dangerous land neighbor, and after 1920 sought a solution in the preservation of a weak state on the other side of her most vulnerable land frontier so as to be at liberty to concentrate her energies on establishing her naval supremacy in the Mediterranean—an attainment which she rightly considers indispensable to her future development as a first-class power. With the disappearance of Austria, a policy focussed on expansion of sea-power will again demand friendship with the strongest land neighbor, this time Germany.

Russia, with many miles of coast-line, has persistently remained in the list of land powers. In spite of her constant and repeated military and diplomatic efforts to reach the sea, Russia's ice-free—or even partially ice-free—ports are very few. From this paradoxical situation of possessing many miles of coast but no water, she derives the negative advantage of being open to attack by sea at only a few points, none of which is dangerously near to her

[2] Cf. Adolf Hitler, *Mein Kampf* (München, 1933), Vol. I, pp. 152–153, and Vol. II, pp. 689 ff.

[3] Richard Hennig, *Geopolitik* (Leipzig, 1931), p. 97.

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vital centers of industry. On the other hand, she is very vulnerable by land. So, although she lost the Russo-Japanese war primarily on the sea, she plans, and will probably continue to plan, her defense chiefly in terms of land attacks.

A curious anomaly is China. It has an enormous coast-line and was at one time a sea power of considerable importance, able to carry on naval warfare and to send large expeditionary forces to the distant islands of Sumatra and Java. It is today no longer a sea power, although in South China there continues to be a considerable amount of maritime activity. The primary reason for this land orientation lies, of course, in the fact that the danger of invasion has until quite recently been almost exclusively from the land. Contributing factors are world location, the relatively late development of maritime trade across the Pacific, and technological backwardness. China's first modern navy was destroyed in the Sino-Japanese war, and governments since the Revolution have been entirely occupied with counteracting the tendency toward internal disintegration. The result is that China today, with one of the major sea powers of the world five hundred miles from her shores, is entirely without a navy.

In the New World, the United States, with more than four thousand miles of land frontiers, is nevertheless definitely a sea power. Her area comprises a large proportion, and her population an even larger proportion, of those of the entire Continent, and of the two billion foreigners in the world only eighteen million are accessible by rail from the United States. Communication, even with South America, which is actually continuous with North America, is maintained chiefly by sea. The land frontiers are safe, and the situation of the United States with reference to foreign contacts approximates that of an island, and makes the navy rather than the army the foundation of United States defense.

In spite of the element of possible strategic weakness inherent in double sea access, states have always striven for access to more than one sea because of the partially countervailing military advantage of more than one route for incoming supplies and because of the resultant commercial and economic advantages. When the kingdom of Charlemagne was divided under the Treaty of Verdun, the Germans, the Franks, and Lothringen each had an outlet on three seas; in the Middle Ages, Bulgaria had access to the Black, the Aegean, and the Ionian Seas; and Serbia under Stephen Duschan reached to both the Adriatic and the Aegean. For a long time the

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Hapsburg Empire stretched from the northern to the southern shores of Europe; and down to the present time the Great Powers of the world have almost without exception had access to more than one sea.

There are other types of double sea access, each of which imparts certain characteristics to the policy and development of a state. A peninsular position is conducive to the development of sea power, particularly if the land frontier of the state is protected by a natural barrier like the Himalayas, the Pyrenees, or the Alps. When the land frontier is unprotected, as in the case of Denmark, peninsular states have the peace-time advantage of being able to utilize their relations to both land and sea and play off one against the other. In time of war they are strategically in a weak position, because they are open to attack from both land and sea.

The states the policy of which is most dominated by the fact of their access to more than one sea are the isthmus states like Mexico, the Central American states with the exception of Salvador, Colombia before 1903, and, from one point of view, Egypt. Such states are by virtue of their geographical location and formation primarily passage states. If they continue as independent entities, it is not through their own strength but because, for obvious strategic and commercial reasons, no one of the Great Powers can afford to have them fall into the complete possession of any other power. They are, nevertheless, almost inevitably dominated by one strong state to which proximity or priority of interest or arrival has given an advantage over the other powers. That this state will be a sea power is a foregone conclusion, since an isthmus, paradoxical as it may seem, is important chiefly as a passage state between oceans rather than between continents.

It is the combination of the factors enumerated—world location, regional location, topography, and climate—that will influence the development of a state toward sea power or land power. We have noted that the pure types, island states and landlocked states, are few in number and that for most states it is a question of more or less. They will be predominantly sea powers if they think primarily in terms of sea routes and conceive plans for defense and attack mainly in terms of a navy. The interest of a state in the sea can be expressed mathematically by dividing its area by the length of its sea frontier. This figure will perhaps represent primarily the strategic interest of a state in the sea. An indication of the more purely commercial significance of the sea in the life of a country

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can be secured by dividing the total inhabitants of all ports of any considerable size by the total population, thus determining roughly the percentage of the total population that presumably gains its livelihood directly or indirectly from the sea. States will be predominantly land powers if their foreign policy is mainly in terms of relations across land frontiers and security primarily a problem of land defense. The ancient empires, with the exception of Rome, were all based on land power, and their strength rested on mobility on land, which means possession of plains and control of land routes. The empires of modern history were all sea powers, and their strength rested on mobility on the sea and control of sea routes.

Their differing conceptions of space and of the conquest of space indicate one of the outstanding differences between land and sea powers. A sea power conquers a large space by leaping lightly from point to point, adjusting itself to existing political relationships wherever possible, and often not establishing its legal control until its factual domination has long been tacitly recognized. An expanding land power moves slowly and methodically forward, forced by the nature of its terrain to establish its control step by step and so preserve the mobility of its forces.[4] Thus a land power thinks in terms of continuous surfaces surrounding a central point of control, while a sea power thinks in terms of points and connecting lines dominating an immense territory.

Considerable so-called thought and considerable space have been devoted to the problem of conflicts between sea powers and land powers. Hennig, the German geographer, asserts that such conflicts are fairly infrequent, but that when they do occur the victory goes almost without exception to the sea power. In support of his thesis, he marshals the great sea victories of Salamis, Lepanto, Trafalgar, Navarino, and Tsushima, admitting that the land power of Rome conquered the seafaring Carthaginians in the first Punic War.[4a]

In direct contradiction to Hennig, Mackinder asserts the ultimate superiority of land power:

> There were fleets of war canoes on the Nile, and the Nile was closed to their contention by a single land-power controlling their fertile bases through all the length of Egypt. A Cretan insular base was conquered from a larger Greek peninsular base. Macedonian land-power closed the

[4] Cf. Josef März, *Landmächte und Seemächte* (Berlin, 1928), pp. 8–9.
[4a] Hennig, *op. cit.*, p. 204.

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Eastern Mediterranean to the warships both of Greeks and Phoenicians by depriving them impartially of their bases. Hannibal struck overland at the peninsular base of Roman sea-power, and that base was saved by victory on land. Caesar won the mastery of the Mediterranean by victory on the water, and Rome then retained control of it by the defense of land frontiers. In the Middle Ages, Latin Christendom defended itself on the sea from its peninsular base, but in modern times, because competing States grew up within that peninsula, and there were several bases of sea-power upon it, all open to attack from the land, the mastery of the seas passed to a power which was less broadly based, but on an island—fortunately a fertile and coal-bearing island.[4b]

No one will question the accuracy of the historical facts presented by Mr. Hennig and Mr. Mackinder. Mr. Hennig suffers an intellectual regret that the greatest land power, Russia, has never encountered the greatest sea power, Great Britain, in a major war, so that he might be provided with a perfect laboratory experiment. We strongly suspect that, should such a tragedy occur, Great Britain would find herself incapable of taking effective control of the vast territory of Russia, as Russia would find herself incapable of winning a major sea battle against the British navy. In other words, both Mr. Hennig and Mr. Mackinder seem to be industriously amassing evidence in support of the theory that when sea powers encounter land powers on the sea, sea powers are victorious, and that when sea powers encounter land powers on the land, land powers are victorious. This conclusion, while not particularly helpful, is not wholly unexpected. It leads to the further truism that whichever power is stronger at the moment of conflict, and on the terrain where the conflict is taking place, will be the victor.

The preceding pages have offered an analysis of regional location primarily with reference to sea or land orientation. Another important aspect of regional location derives from the fact of relative strength. If one observes regional location with regard to relative strength, there are obviously three types—the strong state between two weak neighbors, the relation of approximate equality, and the weak state between two strong states. States with more than two neighbors have a location which can be indicated only by describing the specific combination of basic types. If such a state has broad sea access, there arises the additional complication of vulnerability to states which are not immediate neighbors.

Expressed in the simplest form, in terms of land power relationships, the position of the strong state between two weak states is

[4b] H. J. Mackinder, *Democratic Ideals and Reality* (New York, 1919), pp. 74–75.

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most advantageous. This type of situation can be observed a great many times in early history, and is best illustrated by the great land powers, Babylon, Assyria, Persia, Rome, the empires of Alexander, Charlemagne, and Charles V, the Arab, Mongol, and Turkish Empires, and the China and Russia of the eighteenth century. In most of these cases, the relationship was not a stable one, and this specific type of location can be observed, therefore, only over periods of limited duration. Unless the small neighboring states were buffer states, they were swallowed up by the outward expansion of the center state, and the empires themselves disintegrated sooner or later. Some were divided by inheritance, such as the empires of Alexander and Charlemagne, but most of them broke up because of an unfavorable relationship between size, topography, and systems of communication. As was mentioned in the discussion of size, only effective integration of territory permits successful resistance to centrifugal tendencies at the periphery and pressures on far-flung frontiers. That this simple basic location form of a strong state between two weak states has not reappeared in modern Europe is, of course, explained by the fact that under the title of "balance of power policy" it has been a primary objective in the policy of all states to prevent its occurrence.

The only perfect illustration of this basic type today is the position of the United States between Canada and Mexico. In this case, the relationship is likely to continue, because world location, topography, and climate are all favorable. The shape of the North American continent prevents Mexico from adding significantly to its size by southern expansion, and topography and climate will make it forever impossible to build on its area a powerful economy. Canada, although larger in area than the United States, is by location and climate permitted to develop only a very small part of her territory as a base for economic and political life. The result is that the United States has been able to conduct its foreign policy for the last seventy-five years without giving any consideration to the problem of territorial security, and that its people are unable to understand the preoccupation of Europeans with security and power politics.

A location between states of power equal to its own is a difficult position for a state, since it is in constant danger from a joint attack should its neighbors form an alliance. The obvious answer is, of course, to form alliances with the neighbors of its neighbors, and so create the checkerboard of political alignments that we find

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in Europe and Asia today, with France allied to Russia and Germany to Japan, and so on around the globe. The same pattern can be traced through history. Even where there is no danger of an actual alliance between neighbors, a state is never free to concentrate its attention in any one direction as long as it has strong powers on both sides. Before the destruction of the Austrian navy, Italy could never offer the threat to French security in the Mediterranean that she can today when Yugoslavia has replaced Austria as her eastern neighbor.

A relatively weak state located between two strong states is in the geographic position of a buffer state; whether it will become so in the political sense of the term will depend on various factors. In any case, such a state will be forced to adopt a very special foreign policy. Its own security depends on the security which its neighbors derive from its continued existence. This means that such a state is forced to pursue a precarious policy of neutrality. Any variation which leaves the impression that the bond with one neighbor is becoming stronger may tempt the other neighbor to replace the security obtained from the existence of an independent buffer with a security obtained from actual occupation of the buffer territory.

If location and topography make the buffer state a barrier state like Afghanistan and Thibet and to a certain extent Persia, its chances of survival are high because of inherent geographic characteristics; if location makes it a passage state, but topography a barrier state, like Switzerland and Austria, its problem becomes more difficult; and if both location and topography make it a passage state like Holland, Belgium, and Poland, it will receive no gifts from nature and must depend exclusively on policy. In other words, in such a case, it must make its independence indispensable to the security of its neighbors. As long as the buffer state can retain this importance, and as long as its neighbors remain more or less equal in strength, the buffer state can survive. So we find Holland, Belgium, Switzerland, and the new Poland on the European map, and Persia, Afghanistan, Thibet, and Siam in Asia.

As soon, however, as such a state ceases to be a political necessity for the surrounding powers, or as soon as one of them becomes so overwhelmingly strong that it can disregard the attitude of the others, the buffer state will be absorbed. President Kruger remarked in 1895:

Unsere kleine Republik kriecht nur noch unter den Grossmächten

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herum, aber wir fühlen wohl, dass, wenn der eine uns einen Tritt versetzen will, der andere dies zu verhindern sucht.[5]

But when British power in South Africa grew adequate, the Boer republic became part of a British dominion. So Armenia, which once stood between the Roman and Persian Empires and later between the Byzantine Empire and Islam, has disappeared, and Poland has been partitioned three times; Korea is part of the Empire of Japan; Manchukuo and Mongolia can hardly be called independent, and Austria has been absorbed. In the dynamic world of international relations in which the struggle for power among the great is the basic reality, the ultimate fate of the small buffer state is precarious at best.

Buffer states are an illustration of the strategic significance of a specific area for a particular state. Another illustration, already mentioned incidentally, is the area beyond the neighbor of equal strength—the obvious location for a potential ally. We have mentioned in connection with world location that certain areas will be of different significance to states operating with different systems of reference, and the same will obviously hold true in a minor way within the regional frame of reference.

It is this fact that complicates the problem of the creation of systems of collective security and suggests the likelihood that such systems will not be effective unless they have a sound regional basis. A system of collective security based, not on an international police force, but on the common action of all states members of the group, obviously means that the willingness of a state to act as guarantor is in direct proportion to the significance of the region to be protected. The prerequisites of an effective system are therefore the following: a region extensive enough to hold at least three large powers of approximately equal strength, so that two can provide overwhelming superiority over the third, and in that region small states whose independence is of approximately equal strategic significance to at least two of the three powers.

How few regions there are in the world that fulfill these requirements can be seen from a study of the map; and how effectively the legal system operates if it is not in harmony with basic geographic and political realities may be learned from the history of the last fifteen years. The first prerequisite can be found only in Europe, but may sometime in the future appear in Asia. The second is even

[5] Cited in Maull, *op. cit.*, p. 150.

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more difficult to attain. Belgium and the Western Mediterranean are of approximately equal significance to France and Great Britain, but central Europe has little interest for London and is the area of potential allies for France. An Italian Ethiopia may mean a threat to a British life-line, the Red Sea, and an exposed flank in the Sudan; to France, it means only a rather unwelcome neighbor near a relatively insignificant colony. Great Britain and the United States have, when able, been quite willing to be protectors of regions of specific strategic significance such as the Lowlands and Egypt in the case of Great Britain, and Central America in the case of the United States. When the region is of no immediate strategic significance, as in the case of China, they have merely composed moving diplomatic notes on the beauty of territorial integrity.

So far, regional location has been described primarily in terms of simple space relations; but it is obvious from the discussion of buffer states that the full meaning of these relations can be seen only in terms of topography, for topographical and climatic features will determine the main lines of contact between states.

Topography will determine the direction of mountains and rivers and thereby which will be the natural outflow border; climate will determine which rivers and ports are ice-free and which will remain closed all or part of the year. Climate and topography together will determine the nature of the border territory between states, and therefore whether contacts will take place in a zone of exposure or a zone of protection. The significance of the regional location of a state is obviously affected by the existence of an impassable mountain range or an open plain or river valley as its frontier.

Just as mountains and rivers determine the points of contact within a country, they determine the points of contact between countries. Mountains will direct the flow of rivers, and the nature of the river system, especially where the mouth of a river lies within the borders of a state, will define the sections within easy access of the sea. Even where the mouth of a river lies outside the state, the river sytem will indicate the spheres of interest of various parts of the country. The Rhine valley, as well as that of the Elbe and of the Weser, looks northwest to the sea; the valleys of the Oder and the Vistula find their most frequent and easy contact with the outside world through the Baltic ports; and the commodities and activities of the Danube valley are oriented southeastward toward Central Europe.

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In rare cases such as Norway, the entire area of which faces west and south, Sweden, which looks to the south and east, and Chile, whose mountains seem on the verge of pushing her into the Pacific, a country is united by a similar orientation of all sections. But in most instances mountains cut across national borders, causing various parts of a country to look for contacts in different directions. In the United States, the direction and distance of the Rockies and Alleghenies from the coast and the southward flow of the rivers in the central part of the country determine the percentage of territory that faces the Pacific, the Atlantic, and the Gulf respectively. In Brazil, the influence of climate runs counter to that of topography, for the largest drainage area of the country, which slopes north to the Atlantic, is useless, and the only climatically effective area lies in the south, orienting the country toward the southeast notwithstanding that the greater river system flows north. Colombia, within its present boundaries, is prevented by the mountain range that runs between its Caribbean and Pacific coasts from being the passage state that, with its double ocean access, it might otherwise become.

On the European continent, the Alps and the Pyrenees do not encourage contacts on the Franco-Spanish, Franco-Swiss, or Franco-Italian frontiers, but, in sharp contrast to these relatively closed borders, the Franco-German and the Franco-Belgian frontiers lie open, and men and goods and ideas flow across them in incessant streams. Topographically speaking, Italy faces both east and west, for the Apennines run the length of the peninsula and rivers flow from them to either coast, but the most fertile part of Italy faces west, where volcanoes have created highly fertile plains cut by rivers flowing to the Tyrrhenian Sea. Topography and geography coöperated in the formation of Great Britain, where the river system flows east to the eastern ports, which are nearest the Continent and in constant contact with Continental ports. In Russia, on the other hand, topography and climate have done their worst. A large part of the country drains north to the Arctic by way of rivers the mouths of which are choked with ice twelve months of the year. Southwest of Russia, the Illyrian Alps force Balkan trade and communication into the Aegean and the Black Sea rather than the Mediterranean. Japan, the geographic counterpart of Great Britain, is less fortunate in her topography, as was mentioned earlier. The mountain range that runs the length of the island of Honshu has been an almost impassable barrier; all im-

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portant ports are on the east coast; and the contacts of Japan with the mainland have for that reason occurred very late in Japanese history.

Examples of topography and climate as determining the direction of communication and the points of most frequent contact between countries can be multiplied indefinitely. Whether topography shuts all the doors of a state in the face of the rest of the world, or whether it opens them wide in every direction, the significance of the regional location of that state can be read only in the light of the directions in which it must seek its contacts, political, material, and cultural. If one's doors and windows can be only on the front of one's house, it is small consolation to realize that the teeming traffic of the world's main street is directly behind the house; and if nature has decreed that the house must be entered and left only by the back door, it is equally tragic to find that that door leads only to a quiet, grassy lane.

Topography and climate, however, not only determine the orientation of a state toward the outer world. They also determine, by determining the nature of the border territory, whether the contacts of that state shall take place through a zone of exposure or a zone of protection. From this point of view, it is possible to make certain observations regarding the different effects of different types of border territories and frontiers on the foreign policy of states.

It has been customary in the literature of the field to distinguish the following types of border territory, or so-called natural frontiers: river, sea-coast, forest, marsh, desert, and mountain ranges.[6] In general, it may be said that advanced technical development in systems of communication and methods of warfare has greatly reduced the natural protective value of such frontiers. The only geographical type that still seems to retain a certain protective value is a particular type of high mountain range. All states have

[6] Brunhes and Vallaux dismiss the question of natural frontiers with the following statement: "En définitive, les fleuves et les montagnes ne sont point des frontières naturelles. Les vraies frontières de ce genre sont, avec les côtes, les déserts d'altitude, les déserts proprement dits, les forêts primitives et les marais. Les déserts d'altitude n'existent que du Kouen-Lun à l'Himalaya; les déserts proprement dits et les forêts primitives sont en dehors des châines de grands États; les marais n'ont qu'une faible étendue, et ils diminuent sans cesse. Pratiquement, en dehors de l'Océan, il n'existe dans les régions actives aucune frontière naturelle entre les États. Partout les pressions de contiguïté s'exercent librement; ni les fleuves, ni les montagnes ne les arrêtent." Jean Brunhes and Camille Vallaux, *La Géographie de l'Histoire* (Paris, 1921), p. 361.

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therefore supplemented whatever natural protection topography and climate have offered by artificial military organization in terms of strategic frontiers and fixed fortifications. Taking into consideration this possibility of modifying the natural protective features of geographical delineation, however, one may still claim that the different types of border territory enumerated have certain characteristics, the effect of which can be perceived in foreign policy.

In earlier periods of history, and in relatively new and undeveloped lands, rivers have often served as frontiers. The Rio Grande and the St. Lawrence still mark two of the borders of the United States. At first glance, a river appears to be an ideal and natural frontier, easily recognized and requiring no marking, but as time goes on and states develop on either side of the river, its disadvantages become more apparent than its advantages. Quite aside from the technical difficulties of determining where a river is and is not, and has and has not been, after the processes of erosion and avulsion have been going on for decades, if any economic or social development takes place, the river valley will inevitably tend to become a unit in itself, and the river will cease to function as a frontier. In spite of the assertions of General Foch, the Rhine is not an ideal frontier, for its valley is definitely an economic, industrial, and cultural unit and will continue to be so regardless of where the actual legal frontier may be drawn. The Vistula valley is equally a unit, whether it be contained wholly within Polish borders or Poland be partitioned among her three neighbors.

The effect of such a frontier on foreign policy is obvious. As the valley becomes a unit there will be an inevitable tendency for each riparian state to desire to include the entire valley within its territory. The function of the river as a barrier will completely disappear, and instead of a clearly defined frontier there will exist between the states a zone of territory belonging wholly to neither and desired by both. If one state is overwhelmingly stronger than the other, that state will probably acquire the river valley in time by fair means or foul. If the states are of approximately equal strength, the possession of the valley will remain an unattained objective and a source of friction which will inevitably be reflected in their policies toward each other.

The sea coast as a frontier may exercise a dividing or a uniting influence, depending on the size of the sea, the degree of technical

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development of navigation, and the development of sea power in general and in the state in particular. It is not a natural frontier in that it keeps people out, unless, as in the case of the northern coast of Russia, climatic conditions close its ports to all traffic in either direction. On the contrary, it is a highway of approach, and becomes a defensive barrier only if the country can command it by an effective fleet, when the fleet rather than the sea acts as a barrier. As was mentioned in connection with the discussion of the regional location of Japan and Great Britain, this protective function has decreased since the development of aërial warfare. Nevertheless, the Atlantic and the Pacific remain the chief elements in the defense of the United States, and will be so as long as the United States maintains a navy able to protect its shores and the cruising radius of bombing squadrons is less than four thousand miles.

A coast is the natural line for the frontier, however, and as such all states have sought it and continue to seek it. The possession of a strip of coast-line offers the incomparable advantage of freedom of movement and possibility of initiation of movement beyond the frontier, and is often the key to successful offensive or defensive warfare whether on land or sea, for it makes possible a degree of mobility and a power of concentration of effectives that the most elaborate scheme of mobilization by means of the most strategically planned railroad or road system could never equal.

The forest frontier has probably lost its protective value more completely than any other natural barrier, but in earlier periods, before technical development allowed man to penetrate or annihilate vast wooded areas, they served as genuine barriers against communication or invasion. The northeastern boundary of the Roman Empire was the solid forest zone of Germany, and in the Middle Ages the forests around Moscow sheltered the infant Russian nation from Asiatic hordes sweeping in from the eastern plains. Even today, the conquest of certain tropical forest regions in South America is not complete. It is questionable, however, whether there still exist any forest border zones large enough or sufficiently difficult to penetrate to influence significantly either foreign policy in general or national defense in particular, although the Panama Canal is still considered impregnable against land attack because of the dense tropical forests on either side.

Swamps, on the other hand, retain a definite defense value, even

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against the most advanced military instruments of the twentieth century, as the English army learned in Flanders. The Babylonians were unwise enough to reduce by their own efforts the marsh areas that protected them, and race after race of invaders swept across their frontiers, but the Terai swamp between Bengal and Nepal has effectively guarded the independence of Nepal, and the Pripet marshes have more than once provided a barrier against Russian invasion of central Poland. Indeed, so effective have swamps proved as instruments of defense that nations have even created them artificially.

> Swamps are probably even more difficult to cross than a moderate range of mountains. . . . The artificial swamp, created by the Allies in western Belgium, made movement and attack on that part of the front impossible. The intense bombardment in the Ypres salient and the resulting quagmire made attack difficult for either side, and rendered the use of tanks almost impossible in that area. In fact, swamps would appear to be a greater obstacle to the use of tanks than are deserts, mountains, or even rivers. They may, however, lose their protective power entirely in cold winters, and when frozen over become instead, on account of their level surface, a region of easy movement.[7]

The value of a desert frontier lies not only in the difficulty of its terrain but also in its lack of water, which compels an invading force to follow a specific route along known wells and thus prevents an attack at an unexpected point. Recent engineering developments have tended definitely to lessen the protective power of deserts by making possible the construction of railroads and motor roads, but certain desert areas retain even today a very considerable defense value. The Thar desert east of the Indus, extending about four hundred miles northeastward from the Rann of Cutch, forces an invader of northwestern India to limit his route to the narrow strip between the desert and the Himalayas, as the battlefields of centuries around Delhi mutely testify. In the same way, the deserts east and west of Egypt and the Nile cataracts have limited the possibilities of invasion of that land to approaches from the sea or from the Sinai peninsula, and the Sahara rather than the Mediterranean is still the southern limit of European culture and civilization.

The most effective natural barrier, however, is a combination of desert and mountain areas—namely, high plateaus. The value of

[7] D. H. Cole, *Imperial Military Geography* (London, 1926), pp. 23–24.

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a mountain range as a protection against invasion depends on various factors—the number and altitude of the passes and whether or not they are blocked by snow, the direction of the passes, whether the slope to the passes is easier on one side than on the other, whether the mountain range runs counter to the direction of advance, thus blocking it, or parallel to it, offering a choice of routes to the invader, and the possibility of strategic railroads to the base of the mountains or over the passes. The Alps slope more gently on the French side than on the Italian, and the semi-circular shape of the range causes routes to converge near Turin and Milan so that invading forces from France moving by different routes can unite easily in Italy, while Italian armies advancing into France must diverge, making communication increasingly difficult. In fact, the Alps, which appear at first glance to offer complete protection to the peninsula, have more than once proved the "splendid traitor" to Italian defense that Napoleon once called them. It is possible to follow the rivers of Central Europe which rise in the Alps through passes leading to the Po tributaries; it is possible to reach Italy from the valley of the Danube and its tributaries; and in the west the mountains stop short of the coast, leaving an open strip of level coast-land leading directly into the heart of Italy.

The value of a mountain range as a barrier depends, too, not so much on its absolute height as on the topography of the mountain region in general. The Alps are higher than the Pyrenees, but have broad valleys and many passes, while the Pyrenees stretch like an unbroken wall from the Mediterranean to the Atlantic; and the Dinaric Alps, although low, block the access of Hungary to the Adriatic because of their special type of limestone topography. The Andes interpose an almost complete barrier between Chile and Argentina because of the small number of passes; and the Zagros effectively bar Iran from Iraq. The Hindu Kush range, although at first glance it appears to furnish adequate protection to northwestern India, has low passes and has never been an effective barrier from either a commercial or a military point of view. The Himalayan range, however, offers the combination that has already been suggested as ideal—a mountain range backed by a desert plateau, and blocks the direct way from China to India more effectively than any fortification that man could devise.

That mountains, even when not perfect barriers for defense,

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contribute nevertheless to the stability of frontiers[8] can be seen in the history of those countries whose frontiers are merely lines in open plains. The boundaries of Poland, Hungary, and the present Baltic states have shown a lamentable tendency to shift, as has the open border between France and Germany. In other words, the existence of a mountain range as a frontier almost always offers a certain degree of security, whether or not it is a complete barrier.

The preceding illustrations have made it clear that regional location, both in terms of sea or land orientation and in terms of the relative strength of neighbors, is definitely affected by topography and climate. These conditioning factors must be kept constantly in mind in any attempt to classify a particular state as having a certain type of regional location and to find in that state's policy the elements characteristic of that location type.

So we find that, although the entire policy of a state does not derive from its geography, it cannot escape that geography. Size, shape, location, topography, and climate posit conditions from which there is no escape, however skilled the Foreign Office, and however resourceful the General Staff. Belgium, with her present size, cannot place her industrial centers beyond the reach of enemy bombing planes; the present configuration of Czechoslovakia invites the loss of her western wedge of territory; Syria and Iraq will continue to be the crossroads between East and West; Thibet will always be a barrier state; and the Arctic ports of Russia will not thaw. With these facts foreign policy must reckon. It can deal with them skillfully or ineptly; it can modify them; but it cannot ignore them. For geography does not argue. It simply is.

[8] Brunhes and Vallaux consistently refuse to admit the Alps and Pyrenees as contributing factors in the stability of the southern French frontier: "Il est à remarquer que, sur le long développement des frontières françaises, celles qui montrent le plus de tendances à s'immobiliser sont les frontières montagneuses des Alpes et des Pyrénées. Ce ne sont point ces chaînes de montagnes qui contraignent la frontière à la fixité. Dans les Pyrénées, la fixation date de deux siècles; dans les Alpes, elle date de cinquante ans; mais dans l'un et dans l'autre cas, la montagne n'a été qu'un élément passif. L'équilibre instable des forces produit par la densité variable du peuplement et par les variations de valeur des territoires donne ici, comme pour beaucoup d'autres faits de la géographie politique, l'explication du mouvement et du repos. C'est là une première donnée qui nous servira à ramener à sa juste valeur la notion des frontières naturelles." *Op. cit.*, p. 354.

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THE LOCALIZATION OF THE SPANISH WAR

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In July, 1936, none of the Great Powers wanted a European war. But, as in 1914, the preceding three or four years had brought in their wake a series of incidents and developments which increased tension considerably and made statesmen realize that a general war was far from impossible. The armaments race, the Italo-Abyssinian affair, the remilitarization of the Rhine zone, the Franco-Soviet alliance and the resulting denunciation of Locarno by Germany, the growth of nationalism and dictatorship, the increasing hostility of bolshevism and fascism, the apparent breakdown of world peace machinery—to mention only a few aspects of the situation—produced considerable pessimism about the chances for keeping the peace. On July 1, 1936, M. Blum, speaking in the League Assembly, emphasized "with what serious apprehension France views the present situation."[1] "The world at this moment," he said, "is not a world of peace . . . We feel the atmosphere growing heavy; we see the shadow looming. Everywhere the world is arming . . . For the first time in eighteen years, a European war is once again looked upon as a possibility."

Some two weeks later, the trouble in Spain came to a head, civil war broke out, and the shadow of impending conflict fell at once across the entire Continent. Vividly recalling the trend of events in 1914 when frantic attempts at localization failed, the world began to wonder whether the Great Powers would minimize the importance of their political stakes in the affair and take the necessary action to prevent hostilities from spreading beyond the borders of Spain. Such action was taken; and the unusual technique employed to localize the Spanish war forms the subject of discussion in the pages that follow.

I. ESTABLISHING THE NON-INTERVENTION AGREEMENT

Even before the rebellion was well under way, Europe began to extend aid to the contesting parties in a way that boded ill for world peace. While the Socialist legislators of France, on July 24, unanimously affirmed their "*solidarité totale avec les Republicains espagnols*,"[2] Germany (and Italy) exhibited "an undisguised sym-

[1] *Official Journal, Special Supplement No. 151*, p. 28.
[2] *Le Temps*, July 25, 1936.

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pathy towards the anti-Government forces,"[3] and the pro-Loyalist Soviet press stressed the "inevitability" of fascist intervention.[4] Accusations were hurled at the Blum government, and accentuated in Rome and Berlin,[5] to the effect that the Popular Front was contemplating sending aëroplanes, machine guns, and other war materials to the Spanish government. On July 30, word came from Algeria that a number of Italian army planes, bound for Spanish Morocco, had made forced landings on French soil.[6] In the meantime, the British, German, and Italian fleets began to concentrate in Spanish waters. The fear of international repercussions grew even graver when General Franco accused France of furnishing arms and planes to the Loyalists, and remarked that if his rebellion failed, *"il songe à provoquer un incident international d'une extrême gravité."*[7]

On July 25, the French government, cognizant of the dangers of unlimited intervention, quieted rumors somewhat by prohibiting the delivery of war materials to Spain. A week later it appealed to the principal governments concerned for *"l'adoption rapide et l'observation rigoureuse au régard de l'Espagne de régles communes de non-intervention."*[8] But even though there was agreement in Europe as to the *principle* of non-intervention, anxious days passed before a definite accord could be adopted. Rome expressed its disapproval of the French proposals, insisting that such "indirect non-intervention" as press campaigns, public demonstrations, subscriptions of money, and the enrollment of volunteers should be covered by the agreement.[9] In Berlin, public indignation ran high because of the shelling of the German steamer *Sevilla* by a Loyalist destroyer on August 4, and because of the seizure of a German aëroplane which had landed in Spain.[10] These delays only served to anger the French liberals, who charged that Germany and Italy were stalling for time. Consequently, the British government relieved the tension immeasurably on August 16 by announcing that it continued to give its "fullest support to the efforts of the French" to secure agreement among the Powers, and warning its citizenry not to assist either side in Spain.[11] Finally, three days later, without

[3] *London Times*, July 30, 1936. [4] *Ibid.*, Aug. 5, 1936.
[5] Cf. *Frankfurter Zeitung*, July 26, 27, 31, 1936.
[6] *London Times*, July 31, 1936. [7] *Le Temps*, July 30, 1936.
[8] Note dated Aug. 1, 1936, in *L'Europe Nouvelle Documentaire*, No. 55.
[9] *London Times*, Aug. 7, 1936. [10] Cf. *ibid.*, Aug. 8, 1936.
[11] *Ibid.*, Aug. 17, 1936.

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waiting for a general agreement, the British issued a "prohibition order" forbidding the shipment of arms and aëroplanes to Spain.[12] This was followed, on August 21, by Italian approval; and the entry into force of the non-intervention accord was assured.[13]

In spite of the importance of the understanding, no formal agreement was ever concluded, the contracting parties, through simple note exchange or oral declaration, accepting the obligation (a) to prohibit the direct or indirect export or the reëxportation of arms, munitions, and war materials to Spanish territories, (b) to include in the prohibition contracts in the course of execution, and (c) to inform interested governments of the measures taken to ensure the application of the agreement.[14] Some twenty states, including France, Great Britain, Portugal, and Russia, voluntarily assumed additional obligations in that they pledged themselves "to abstain rigorously from all interference, direct or indirect, in the internal affairs" of Spain. Six states, however, including Germany and Italy, omitted this significant clause from their declarations. Furthermore, the nature of the obligations accepted varied considerably according to the reservations attached.[15] On the other hand, as far as the writer is aware, no government has yet attempted to justify intervention on its part on the ground that the agreement was of an informal nature and thus not binding, or that its obligations were in any way inferior to those of other non-intervention states because of reservations.

II. THE NATURE OF THE NON-INTERVENTION AGREEMENT

The Spanish government has branded the Non-Intervention Agreement as a "juridical monstrosity." It has frequently been denounced as "unneutral," and a violation of Loyalist rights in that it withheld arms from an established government. One must remember, however, that neutrality laws are not applicable to the Spanish situation, for, as Oppenheim defines it, neutrality is an "attitude of impartiality *adopted by third States towards belliger-*

[12] *Ibid.*, Aug. 20, 1936.

[13] See *La Documentation Internationale*, Nos. 32–33, pp. 18–20.

[14] Texts in *L'Europe Nouvelle Documentaire*, No. 44. For an analysis, see N. J. Padelford, "The International Non-Intervention Agreement and the Spanish Civil War," *American Journal of International Law* (cited as *A.J.I.L.*), October, 1937, pp. 580 ff.

[15] See the Italian reservation concerning "indirect non-intervention"; also those of Germany, Portugal, Hungary, Turkey, Yugoslavia, and Rumania.

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ents."[16] Since the rebellion remains a domestic affair in the eyes of international law, there are few legal rules which apply, the problem of intervention or non-intervention being a political question determined largely by the policies of individual governments.

Under the laws of neutrality, neutral states may not assist one belligerent to the detriment of another. While it may be unneutral for states to deliver war materials or grant loans to belligerents,[17] the transport of such materials or the granting of loans by private individuals or concerns need not be prohibited.[18] Neutrality is thus an attitude of impartiality "on the part of states, and not on the part of individuals."[19] Furthermore, according to the Hague Convention cited (Article 6), the responsibility of the neutral is not involved when persons cross the frontier "separately to offer their services" to the belligerents. Nor is the expression of sympathy on the part of a government, its press, or its public opinion a violation of the attitude of impartiality required of neutral states. On the other hand, each government may, within its own discretion, impose upon its citizens those restrictions which seem advisable in order to ensure neutrality. These steps may, but need not, include restrictions on the press, on the shipment of arms and munitions to the belligerents, on the right of its citizens to enlist in the forces of the conflicting parties, etc.

The Non-Intervention Agreement thus extends much farther than the obligations of states under the laws of neutrality, for it not only prohibits states from sending arms and munitions, but covers actions by individuals as well; it is being applied not in a "real war," but to a civil conflict in which belligerent rights have not been accorded; it has been extended to cover volunteers and might include public subscriptions, etc.; it is a policy, not an attitude prescribed by international law.

The only multilateral treaty concerning our immediate problem is the Convention on Duties and Rights of States in the Event of Civil Strife, adopted at Havana in 1928. In its Article I (4), the contracting states agree to "forbid the traffic in arms and war

[16] L. Oppenheim, *International Law*, 1926, II, p. 475. My italics.

[17] Convention on Maritime Neutrality (Article 16) adopted at Havana in 1928. M. O. Hudson, *International Legislation*, IV, p. 2408.

[18] Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, in J. B. Scott, *The Hague Peace Conferences of 1899 and 1907*, II, p. 405.

[19] Oppenheim, p. 478.

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materials, except when intended for the government, while the belligerency of the rebels has not been recognized, in which latter case the rules of neutrality shall be applied."[20] The Powers also agree to use "all means at their disposal to prevent the inhabitants of their territory . . . from participating in, gathering elements, crossing the boundary, or sailing from their territory for the purpose of starting or promoting civil strife." Similarly, the rules adopted by the Institut de Droit International stipulate that, in case of civil strife or "*mouvements insurrectionnels*," any third power "*est [r]estreinte á ne fournir aux insurgés ni armes, ni munitions, ni effets militaires, ni subsides*," and is especially enjoined to prohibit the organization of military expeditions hostile to the recognized government.[21]

Obviously, therefore, those states which furnished arms and munitions to the Insurgents committed an act of intervention and might be held accountable by the established government. The Loyalists, on their part, have had the right under international law to purchase war materials to suppress rebellion, although this right is necessarily conditioned by the willingness of third states to coöperate. For even though, as one writer suggests, the established government "may expect partial treatment from third Powers,"[22] the latter might well remain "neutral" (passively impartial) if such an attitude conforms to their own interests or to the higher interests of the international community. Regardless of the term one wishes to apply—negative intervention, controlled intervention, counter intervention, qualified intervention, or "collective declaration of neutrality"[23]—the policy of non-intervention would seem to be justifiable from the point of view of both international law and world politics. Reservations adopted at the time of its acceptance, however, indicate clearly that the Non-Intervention Agreement was a policy devised to meet exceptional circumstances and was not to be considered as creating a precedent in international law.[24]

[20] Text in Hudson, IV, p. 2418.

[21] *Annuarie de L'Institut de Droit International*, 1900, p. 227.

[22] V. A. O'Rourke, in *A.J.I.L.*, July, 1937, p. 410.

[23] H. A. Smith, "Some Problems of the Spanish Civil War," *British Yearbook of International Law*, 1937, p. 28.

[24] The Rumanian government, for example, declared that "it constitutes a particular case which cannot create a precedent and which does not imply, for the Rumanian government, the obligation of recognizing the principle that a legal

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III. THE NON-INTERVENTION COMMITTEE

Since September 9, 1936, the Non-Intervention Committee, created at the instigation of the French government, has dealt more or less regularly with the general problem of non-intervention. Several striking features about the composition of the Committee should be noted at the outset. By carefully avoiding any connection with Geneva, the Committee has been able to secure representation from Germany and Italy and at the same time it has avoided the necessity of inviting the Loyalist government to take part in its deliberations. Yet by remaining a purely European instrumentality[25] the Committee has been embarrassed considerably by the sizeable breach in non-intervention caused by the forty states of the international community which have never been a party to the agreement.[26] Further embarrassment has been caused by the necessity of consulting with both the Loyalist and Franco governments in the formulation of control projects.

According to the French note of August 25, 1936, the Committee was to be charged with two main functions: (a) *de réunir toutes informations sur les mesures prises, ainsi que*, and (b) *d'examiner et de résoudre pratiquement les difficultés se rattachant à l'application des mesures convenues*.[27] In line with the first function, the Committee, at its meeting of September 9, 1936, called for information concerning the legislation and other measures taken by the governments in order to give effect to the Non-Intervention Agreement.[28] This material was later assembled by the Secretary and published by the British government in November, 1936.[29]

During October and November, 1936, the Committee busied itself largely with receiving and examining complaints against Germany, Italy, Portugal, and Russia—all accused of violating the agreement. Under the rules of procedure, it was the Committee's duty to examine such complaints in order to establish the

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government cannot obtain, at its demand, the assistance of another government against a rebellion."

[25] Besides Spain, Switzerland is the only European state not a member. Because of the nature of the permanent neutrality of the Confederation, Switzerland adopted non-intervention measures of her own.

[26] For the position of the United States, see G. A. Finch in *A.J.I.L.*, Jan., 1937.

[27] *La Documentation Internationale*, Nos. 32–33, p. 24.

[28] *Communiqué of Committee*, Sept. 9, 1936.

[29] Document Cmd. 5300, Spain No. 2 (1936). For an analysis of this material, see N. J. Padelford, cited above.

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facts, provided they were submitted by a non-intervention state and were considered by the submitting government as of sufficient importance and based on adequate evidence to afford a "reasonable presumption" that some violation had actually occurred.[30] This procedure was put to test by a veritable war of accusations and counter-accusations started on October 7 by a communication from the Soviet Union charging that the "repeated violations" of Portugal, Italy, and Germany rendered the Non-Intervention Agreement "virtually non-existent."[31]

While the complaints filed were usually fairly definite and detailed, they were always very energetically denied, the resultant debates being at times "heated and acrimonious." Thus the Committee meeting of October 9, by "the noise and clamour of accusations and counter-accusations and by the violence of invective," was said to be "without precedent in diplomatic debate."[32] Yet sufficient evidence was never presented to condemn any particular government—partly because the Committee did not exercise the power to create a commission of inquiry to investigate more thoroughly the charges made. Following its accusation of Portugal on October 7, the Russian government proposed that a commission be sent to the Spanish-Portuguese frontier to investigate the situation and report to the Committee. The Portuguese delegate, however, refused to discuss the proposal, and the Italian representative later maintained that the Committee's competence did not extend beyond a simple investigation, providing in no case for a commission "*sur place.*"[33] While the rules of procedure seem to bestow ample power on the Committee to take those measures deemed necessary to establish the facts, political prudence and state sovereignty prevented any concerted effort to create such an auxiliary organ. Consequently, in each case, after the "prosecution" and the "defense" were heard, the opinion was expressed that, because of lack of evidence, because the alleged incidents had not taken place, or because they occurred before the agreement had gone into effect, sufficient proof of a violation had not been received.[34] Even if these accusations had been definitely proved, there were

[30] *Communiqué of Committee*, Sept. 21, 1936.
[31] Text in *L'Europe Nouvelle Documentaire*, No. 56, p. 1.
[32] *London Times*, Oct. 10, 1936.
[33] *Communiqué*, Oct. 9, 1936.
[34] See, for example, *Communiqué*, Oct. 28, 1936.

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no provisions for sanctions or punitive measures against the guilty party.

The Committee has likewise been handicapped in that it has enjoyed no powers of a legislative nature. It has been restricted within the narrow limits of the original agreement, and has been able to progress only if and when it could command the confidence and approval of all of its members. A survey of the work of the Committee since December, 1936, will give some indication of the difficulties encountered in this respect.

IV. THE PROHIBITION OF VOLUNTEERS

While Europe's first task was to check the unlimited flow of arms and munitions into Spain, it soon became evident that something would have to be done to stem the tide of volunteers who were rapidly turning the Spanish conflict into a "Little World War." On August 7, 1936, it was reported that 200 French sympathizers had arrived in Barcelona to offer their services to the workers' militia.[35] Numerous other reports came through of German, Italian, Russian, and French aviators enlisting with the warring parties. By early October, the correspondent of the *London Times* in Madrid was able to write that Italian, French, Russian, and British volunteers were serving in the Loyalist ranks, and that Italians, Portuguese, and English had already given up their lives for the rebel cause.[36]

Almost mortally wounded by the prolonged wrangling with the Committee during October and November,[37] non-intervention received an additional blow through the recognition of the Franco faction by Germany and Italy on November 18. Ten days later, the Spanish government, in appealing to the League of Nations, complained of the "armed intervention of Germany and Italy" that threatened to disturb world peace. These facts, coupled with alarming reports of volunteers arriving in Spain, led Great Britain to demand a detailed study of the whole problem,[38] and to declare, on December 4, that if volunteers were not prohibited "it must have grave repercussions on international relations outside Spain, in addition to prolonging the conflict in that country."[39]

[35] *London Times*, Aug. 8, 1936. [36] *Ibid.*, Oct. 6, 1936.
[37] See above, p. 242. [38] *Communiqué*, Dec. 2, 1936.
[39] *La Documentation Internationale*, No. 34, p. 44. See also *London Times*, Dec. 8, 1936.

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On the same day, Great Britain and France invited the Powers to collaborate in an offer of mediation and in the establishment of a control system designed, among other things, to prevent the entry of volunteers into Spain. The vague and somewhat discouraging replies of Germany, Italy, and Portugal[40] led to a new *démarche* on Christmas eve, when the recalcitrant governments were once more impressed with the "urgent need of putting an end to the flow of foreign nationals into Spain,"[41] and were requested to institute the necessary measures at the earliest possible date.

The replies to this second *démarche* were more encouraging, although the German and Italian responses were delayed until January 7,[42] ostensibly because the holiday season prevented government leaders from conferring on the matter.[43] On January 10, the British government again took the initiative and put into force the Foreign Enlistment Act of 1870, forbidding British subjects to recruit soldiers for Spain, or to enroll in the contesting armies.[44] It then suggested that the other Powers adopt similar restrictions pending the construction of a control system.[45] On January 15, the French Chamber of Deputies, by a vote of 591 to 0, bestowed upon the government the power to ban the recruiting and transporting of volunteers for Spain.[46]

The replies of Germany and Italy were again delayed, this time until January 25. It was apparent that "in any case," as one diplomat put it, "if the experiment of prohibition is to be forced on Spain, the Italian bootleggers are determined that Spain shall go dry with at least as many gallons of chianti in her cellars as there may be of claret or of vodka."[47] Certainly it is true that during December and January the press contained frequent reports of volunteers—mostly German and Italian—landing in Spain.[48]

It was not until February 16 that a definite accord was finally adopted. Under its terms, the Non-Intervention Agreement was extended to "cover the recruitment in, the transit through, or the

[40] Texts in *L'Europe Nouvelle Documentaire*, No. 57.

[41] *London Times*, Dec. 28, 1936.

[42] *L'Europe Nouvelle Documentaire*, No. 57.

[43] It was reported from Berlin that the final decision "may be drawn out . . . until one more desperate effort has been made by General Franco's forces on the present basis." *London Times*, Jan. 1, 1937.

[44] *Ibid.*, Jan, 11, 1937.

[45] Text in *L'Europe Nouvelle Documentaire*, No. 57.

[46] *Le Temps*, Jan. 16, 1937.

[47] *London Times*, Jan. 18, 1937.

[48] For examples, see *Bulletin of International News*, XIII, pp. 503, 506, 605, 608, 645.

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departure from their respective countries of persons of non-Spanish nationality proposing to proceed to Spain or the Spanish dependencies for the purpose of taking service in the present war."[49] This prohibition went into effect on February 20, and enforcing legislative and administrative measures in the way of frontier guards, ticket and passport controls, etc., were immediately reported from France, Germany, Russia, Italy, Portugal, and other countries.[50] Since the Powers likewise agreed to put the sub-committee's control scheme into operation on March 6, we can better appreciate the interrelationship of the whole mechanism if we now turn to the problem of establishing a control system around the borders of Spain.

V. THE CONTROL SYSTEM ON LAND AND SEA

The necessity of erecting some such control was emphasized dramatically on October 7, 1936,[51] when the Soviet representative charged that Portugal served as a base of supplies and munitions for rebel troops. Declaring that non-intervention was rapidly becoming "a camouflage for the rebels against the legitimate Spanish government,"[52] he demanded the immediate institution of a control of the Portuguese ports under the direction of the British and/or French fleet. While Portugal refused to discuss the problem, a second approach was made on October 24, when Lord Plymouth suggested the establishment of impartial committees at the chief points of entry *in Spain* to report the circumstances concerning alleged violations of non-intervention.[53] Spurred on by the realization that the simple discussion of complaints was hardly enough to insure non-intervention, the committee proceeded to elaborate a scheme of control by land, sea, and air, and on December 2 submitted it to the Insurgent and Loyalist leaders for approval.[54]

Unable to secure access to Spain, the land control system had to be confined to adjacent territory. The Portuguese government steadfastly refused to submit to supervision by *international* officials, insisting that "such control would constitute a terrible prece-

[49] Text in *L'Europe Nouvelle Documentaire*, No. 58.

[50] *Le Temps*, February 20, 1937; *London Times*, Feb. 22, 1937.

[51] See also the Portuguese note of August 21, 1936, and the statement of the Italian representative on September 14, 1936, in *La Documentation Internationale*, Nos. 32–33, pp. 20, 28.

[52] *Ibid.*, p. 35. [53] *Communiqué*, Oct. 28, 1936.

[54] The air control project was omitted, since certain states had not approved.

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dent for the liberty and independence of small countries."[55] A solution was finally reached when Portugal, in order to guarantee the fulfillment of her own non-intervention obligations, invited the British government to send observers attached to the British foreign service in Portugal. This concession was made because "of Portugal's confidence in her [Great Britain's] attitude of impartiality and of the alliance between the two countries."

Following considerable delay caused both by technical difficulties and by political intrigue, the resolution relating to a Scheme of Observation of the Spanish Frontiers by Land and Sea was adopted by the Committee on March 8, 1937.[56] It was put into effect on April 19, and was in full operation by April 30.

The machinery for the administration of the observation scheme fell into four divisions; the International Board for Non-Intervention, the organization for observation on Spanish land frontiers, the system of observation of ships, and the naval control. The Board, made up of a chairman and members nominated by eight governments (including the Great Powers), was entrusted with the administration of the entire mechanism—matters involving questions of principle being left for the Committee to settle. Access to Spain by land was to be guarded by an international force of 265 observing officers,[57] five to be stationed along the Gibraltar-Spanish border, 130 along the Franco-Spanish frontier, and the remainder in Portugal. To carry out their duties properly, these officers were granted ordinary diplomatic immunities, with the right to examine passports, to call upon authorities to verify the nature of particular consignments of goods, and to enter railway stations and similar premises in order to ascertain whether arms or war materials were being exported to Spain or foreigners were entering the country in violation of non-intervention.[58] Any infractions discovered were to be reported to the Board and to an official of the country in which the observer happened to be stationed.

Access to Spain by sea was to be watched over by a group of 550 "observers" stationed at certain observation points, principally the Downs, Cherbourg, Lisbon, Gibraltar, Marseilles, Palmero, and Madeira.[59] All ships of non-intervention states proceeding to

[55] Text in *London Times*, Feb. 22, 1937.
[56] Document Cmd. 5399, Spain No. 1 (1937).
[57] *Ibid.*, p. 19.
[58] Document Cmd. 5399, pp. 4–5.
[59] *Ibid.*, pp. 11, 19.

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Spanish territory were to stop at specified "observation ports" in order to embark two or more observing officers,[60] who were to secure information as to the cargo, inspect the ship's papers, interrogate passengers, officers, and crew, and supervise unloading in order to determine whether there was any breach of non-intervention. To ensure execution of the observation plan, a naval cordon of British, French, German, and Italian warships was thrown about the Spanish coast. The waters to be patrolled were divided into eight zones and distributed so that the blockade against aid to the Insurgents was entrusted to France and Great Britain, while those portions of the coast under Loyalist control were placed under the supervision of Germany and Italy. In theory, such an arrangement should have resulted in a more alert watchfulness on the part of the patrol. Actually, it led to the downfall of the system.

It was the duty of the naval patrol, within ten miles of the coast, to verify the identity of non-intervention ships proceeding toward Spain, and to ascertain whether or not observing officers had been embarked according to regulations. The commanding officers of the patrol fleets were consequently given the right, when necessary, "to order such ships to stop, to board them, and to examine their certificates of registry and clearance documents," but not the right of search.[61] Finally, some sanction for the whole scheme was provided in that whenever offences against non-intervention were reported, the participating governments agreed to "take such legal or other proceedings as may be found appropriate against the owners or masters of vessels" involved and to report to the Board any penalties inflicted.[62]

While this "innovation in international law" functioned fairly well for a time, General Franco, calling it a violation of his rights, threatened reprisals, and the Valencia government declared that no one was to "detain or interfere with Spanish ships . . . under any pretext."[63] This left a sizeable gap in the non-intervention dike through which ships flying the Spanish flag sailed, carrying arms, munitions, and human war materials. This breach was further widened in that ships from Asia, Africa, and the Americas were

[60] One officer in case of small ships.

[61] See Document Cmd. 5399, Sec. IV. Vessels complying with the regulations were to fly a special pennant.

[62] *Ibid.*, p. 9. [63] *London Times*, March 23, April 22, 1937.

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likewise immune from control. Less serious, perhaps, was the fact that the third leg of the control tripod—air control—was missing. Such an arrangement would have necessitated the posting of observers in all airports in Spain, or in outside aërodromes within flying distance of the Spanish border—too thorny a problem for the Committee to solve.

Nevertheless, the mechanism largely put a stop to the influx of both men and munitions until May 29, when the *Deutschland*, of the German patrol, was bombed by Loyalist aëroplanes and a large number of the crew killed and wounded. Insisting that the absence of responsible government in Spain necessitated immediate recourse to self-help, Germany retaliated by bombarding the Mediterranean port of Almeria.[64] The German government likewise announced that it would "cease to take part in the control schemes, as well as in the discussions of the Non-Intervention Committee, as long as they have not received sure guarantees against recurrence of such events."[64a] Italy followed in Germany's footsteps, leaving the eastern coast of Spain unpatrolled and Europe fearful lest non-intervention fail completely.

Once more the British took the initiative, and on June 12 the four Powers agreed that in case of attack upon patrol ships, they would "at once consult upon measures to be taken in concert."[65] In the meantime, the Spanish authorities were to give some assurance that they would respect the naval control units and would establish safety zones "where ships can lie at anchor without risk of being exposed to military operations." The agreement was thus framed with the double purpose of ensuring a modicum of security for the patrol ships and attempting to avoid a repetition of the Almeria incident by providing for "consultation" and a resultant "cooling off" period in case of attack. Germany and Italy, arguing that "consultation" could not diminish the right of every nation to defend its interests and honor against aggression, rejoined the Committee on June 16, and ordered their fleets to resume control duties off the Spanish coast.[66]

[64] Germany's action was undoubtedly drastic, for it is generally agreed that a state should resort only to those reprisals which are "as mild and delimited as the exigencies of the remedial requirements will permit." See E. C. Stowell, *International Law*, pp. 480 ff.

[64a] Note in *London Times*, June 1, 1937.

[65] *Ibid.*, June 14, 1937.

[66] Text of *Communiqué* in *London Times*, July 17, 1937.

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Consultation soon had its first test. On June 19, the German press announced that a Loyalist submarine had unsuccessfully torpedoed the German cruiser *Leipzig*—although apparently the submarine was not seen nor were the torpedoes directly observed. The consultation which followed ended in disagreement on the proposal that "an immediate naval demonstration showing the flag of the four Powers should be held off the coast of Valencia."[67] France and England, objecting that the facts were not well enough established to warrant such action, recommended a complete investigation of the affair. Germany and Italy, insisting that the facts as established by Germany were sufficient and that the only function of the Powers was to *agree on the type of action to be taken*, withdrew "finally" from the naval control scheme.[68] While international observers continued their duties at observation ports, the *international* control of French and Portuguese land frontiers was soon discontinued.

VI. THE ANTI-PIRACY PATROL

The naval patrol scheme was abandoned completely on September 17, 1937, when the British and French ships on duty steamed away to meet a new threat—"piracy" in the Mediterranean. During August alone, British shipping had suffered fifteen lawless attacks by submarines and airplanes of "unknown nationality," and the Soviet Union, Denmark, France, Turkey, and the Valencia government reported similar offences against their merchant vessels. While the Soviets were defiantly laying the crime at Italy's door, it became apparent that the continuation of this modernized piracy would severely handicap the Loyalists, for it virtually stopped the flow of Russian goods to Spain. To deal with this "intolerable situation" in the Mediterranean, the British and French governments called the Nyon Conference.

Represented at Nyon (September 10–14) were Bulgaria, Egypt, Great Britain, France, Greece, Rumania, the Soviet Union, Turkey, and Yugoslavia. Germany and Italy remained aloof, insisting that the matter be referred to the Non-Intervention Committee; but Great Britain and France made their first real show of diplo-

[67] *Communiqué* in *London Times*, June 23, 1937.

[68] Germany declared she was "not willing to expose her naval forces, while entrusted with an international task, to further target practice off Red Spain." Text in *London Times*, June 24, 1937.

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matic firmness in many months, and agreement was reached in spite of the absence of the fascist *bloc*.

With a view to protecting ships not belonging to either Spanish party, the contracting states agreed[69] that any submarine attacking a merchant ship contrary to the terms of the London Naval Treaty of April 22, 1930,[70] should be counter-attacked and, if possible, destroyed.[71] To carry out this purpose, the Mediterranean was divided into zones and assigned to the participating Powers. Riparian states were to operate in their own territorial waters in the eastern Mediterranean, while Britain and France were to patrol the western Mediterranean, Malta Channel, and the high seas (up to the entrance of the Dardanelles) wherever danger to shipping seemed likely to arise. The Adriatic and Tyrrhenian Seas were left unassigned, in the hope that they might later be allotted to Italy and Italian disapproval of the Conference assuaged somewhat.

To reduce the burden of policing such vast stretches of water, the signatories agreed to advise their merchant ships to follow certain main routes in the Mediterranean. They likewise agreed that submarine movements outside of certain local areas should be permissible only if the other Powers were notified and if such submarines were accompanied by a surface ship. Finally, it should be noted that the status of the parties in Spain was not changed by the agreement, which did not admit in any way the right of either party "to exercise belligerent rights or to interfere with merchant ships on the high seas."

Two extensions of the Nyon Agreement are worthy of comment. On September 17, 1937, a supplementary accord was signed at Geneva whereby the anti-piracy arrangement was extended to cover attacks by surface vessels and aircraft against non-Spanish shipping.[72] This appears to be the first agreement ever made relative to the status of aircraft attacking merchantmen. A second extension followed the Italian decision on September 21 to join

[69] Text in *New York Times*, Sept. 15, 1937.

[70] Confirmed by the London Protocol, November 6, 1936.

[71] The London Treaty provides that submarines, like warships, "except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit or search . . . may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew, and ship's papers in a place of safety." Text in Hudson, V, p. 417.

[72] *New York Times*, Sept. 18, 1937.

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the naval patrol on a parity basis with England and France.[73] The plan involving this principle, as announced by the military experts of the three countries, recognized Italy as "a great Mediterranean Power," and divided the Mediterranean so that the fleets of each state might guard the waters in which they are most interested.[74] That this international police force is functioning smoothly is attested by the fact that since its inception in September piratical attacks in the Mediterranean have virtually ceased.[75]

VII. RECOGNITION VS. THE WITHDRAWAL OF VOLUNTEERS

Following the creation of the control system in March, the Committee turned to the *positive* phase of non-intervention, i.e., the withdrawal of non-Spanish nationals engaged "directly or indirectly" in the rebellion. Although Italy declared on March 23 that she "would not withdraw any of her 'volunteers' . . . until the war had been decided by the defeat of the Spanish Reds,"[76] an advisory committee was later appointed to study the problem. Its report of May 26 stressed the need for an armistice or truce for the successful removal of volunteers—a prerequisite which practically assured the failure of the plan.[77] On May 29, the League Council resolved that the withdrawal of all non-Spanish combatants was the most effective remedy for a serious situation, "and the most certain means of ensuring the full application of the policy of non-intervention."[78] Then came the *Deutschland* and *Leipzig* incidents and a period of rather unfruitful negotiation.

The British plan of July 14, following on the heels of other abortive projects, was obviously a compromise[79] designed to ensure effective non-intervention within the divergent views of different states. First of all, the control mechanism about Spain was to be

[73] An Associated Press dispatch of November 11 indicates that between 30 and 40 Italian warships finally joined the patrol, which for nearly two months had been made up of some 150 British and French ships.

[74] According to the *New York Times* (Sept. 30, 1937), Italian ships were to patrol Italy's own coast line, the Tyrrhenian Sea about Sardinia, and the coast of Libya.

[75] Two such attacks in January, 1938 (the first incident of the kind in over two months), caused the British government to propose a "quarantine" of submarines in the Mediterranean so that all submarines found outside Spanish territorial waters would be "classified as pirates and be liable to attack as soon as located." See *United Press Reports* for February 2, 3, 1938.

[76] *Communiqué* in *London Times*, March 24, 1937.

[77] *Ibid.*, May 27, 1937.

[78] *Monthly Summary of the League of Nations*, May, 1937, p. 98.

[79] Document Cmd. 5521, Spain No. 2 (1937).

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reconstructed by (a) continued use of observers on ships visiting Spain, (b) restoration of land frontier supervision, and (c) discontinuance of the naval patrol and substitution of international officers located in Spanish ports. Non-member Powers were to be invited to coöperate. Further concessions to German-Italian interests were made in the proposal that non-intervention states extend *limited belligerent rights* to the warring factions in Spain.[80] This, it was argued, would strengthen non-intervention, since ships flying Spanish or non-European flags would be subjected to a rigorous and effective control by the conflicting parties in the exercise of belligerent rights. Illegitimate traffic in arms and munitions, possible under the Non-Intervention Agreement, would thus be stopped.

An additional plank in the British platform was the withdrawal from Spain of "all persons whose evacuation is recommended in the Report of the Technical Sub-Committee." In effect, this included those people in Spanish territory who were nationals of non-intervention states on July 18, 1936, and who could not prove that they had entered the service of either party before that date.[81] Finally, the proposal established a close relationship between the withdrawal of volunteers and the granting of belligerent rights by providing that recognition should "become effective when the Non-Intervention Committee place on record their opinion that the arrangements for the withdrawal of foreign nationals are working satisfactorily and that this withdrawal *has in fact made substantial progress.*"

Although the British project was quickly accepted as "a suitable basis for discussion," disagreement soon arose concerning the order in which the two main points were to be considered. Germany, Italy, and Portugal maintained that the question of belligerent rights should be examined before the withdrawal of volunteers, while France, Great Britain, and Russia took the opposite view.[82] The *impasse* became even more formidable when the Soviet government declared that it could consider granting the rebels belligerent

[80] For the limitations, see *ibid.*, pp. 4–5. Such restrictions on the normal exercise of belligerent rights seem wholly outside the pale of existing international law.

[81] Text in *London Times*, July 15, 1937. Included were combatants, prisoners of war, arms-makers, etc., as well as all "those whose activities are in any way susceptible of prolonging or embittering the present conflict."

[82] *Communiqué, London Times*, July 21, 1937.

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rights only when the complete and loyal evacuation of foreign nationals should in fact have been accomplished.

It is generally agreed that the war in Spain should be acknowledged and the parties accorded belligerent rights.[83] But since recognition, when it takes place, "is from the legal point of view a concession of pure grace,"[84] it may be granted or withheld by governments depending on the benefits derived therefrom. In the present case, the recognition of the warring parties as belligerents would subject them both to the rights and duties of legal warfare and would damage the Loyalist cause considerably, since Franco, with superior naval strength, could undoubtedly exercise more effectively such rights as "visit and search at sea, the confiscation of contraband goods, and the maintenance of blockade."[85] Moreover, such action would be detrimental to the shipping interests of those states engaged in furnishing the Spanish government with supplies.[86]

The withdrawal of volunteers raises other almost insuperable problems. Would the parties in Spain agree? How, and in what proportion, would withdrawal be effected? What constitutes "substantial progress"? Were non-combatants (political agitators, etc.) to be affected? The settlement of these and other questions would obviously require a long period of time, and certain states feared that, once belligerent rights were granted, the evacuation of foreigners would wait "perhaps for weeks, for months, or forever." The *impasse* was arrived at then because neither the supporters of Franco nor the Loyalist sympathizers wished to make important concessions and, in common language, be left "holding the sack."

Following the successful Nyon Conference, the withdrawal of volunteers was again brought to the fore. On October 9, Italy refused the Anglo-French invitation to a three-power conference, but a week later she offered to withdraw a certain number of volunteers "as a substantial beginning of the application of the British plan," providing an equal number were withdrawn from Loyalist

[83] See Prize Cases (1862) 2, Black, 635.

[84] W. E. Hall, *A Treatise on International Law* (8th ed.), p. 39.

[85] C. G. Fenwick, *International Law*, p. 112; Stowell, p. 326.

[86] On November 29, 1937, following an announced blockade of Loyalist ports by the Insurgents, the British government denied the right of Franco to blockade Spain or to attack merchant ships in or out of Spanish waters until belligerent rights had been granted. *New York Times*, Nov. 29, 30, 1937.

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forces. Then, following the French five-point plan of October 16,[87] the Italian representative suggested the creation of an international commission to ascertain the number of foreign nationals fighting in Spain and to make arrangements for their evacuation. With the commission's report at its disposal, the Committee could decide at "which moment and in what manner belligerent rights should be recognized."[88]

On October 26, France, Germany, Great Britain, and Italy agreed to grant belligerent rights as soon as there had been "substantial progress" in the withdrawal, and on November 2 the Sub-Committee decided to approach the warring parties for their approval of the British plan.[89] Only isolated Russia remained immovable, although her representative urged the Committee to continue negotiations without her and finally, on November 16, accepted the plan without reservations. It was clear, however, that the old struggle of belligerent rights vs. the withdrawal of volunteers had not been settled. It had merely been postponed, pending the long and tortuous negotiations which remain ahead of the Committee.[90]

In the meantime, the Franco régime moved one step closer to its goal when the British government, early in November, announced its intention of establishing a commercial attaché at the seat of Franco's government. While Mr. Eden assured the House of Commons that such a step would constitute "recognition of neither [party] as a government or as a belligerent"[91]—British consular agents in Manchukuo and Ethiopia are cited as examples—it marks the opening of a new era in the localization of the Spanish rebellion. With trouble brewing in the Orient, Russia is much less interested in Spain, and there has been less talk in Anglo-French circles about strong action to force the withdrawal of volunteers and more talk about a general European peace settlement.

[87] The French plan included immediate withdrawal of volunteers, limited belligerent rights, a proportional "token" withdrawal, and the perfection of the control system.

[88] *New York Times*, October 17, 21, 1937.

[89] *Ibid.*, October 27, Nov. 3, 1937. United Press reports of November 5 announced the unofficial acceptance of the withdrawal project by both parties in Spain.

[90] During December and January (1937–38), the Sub-Committee held a number of meetings to study the mechanics of withdrawal, but so far little progress has been made. On January 11, for example, the question as to what constitutes "substantial withdrawal" was still unsettled. *New York Times*, Jan 12, 1938.

[91] *Ibid.*, Nov. 9, 1937.

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Constantly improved relations with Franco should ultimately result in recognition.[92] Indeed, one may well raise the question of whether the activity of the Non-Intervention Committee, the offers to mediate, the continuous negotiations carried on with the warring parties, the refusal to aid the legitimate government, and engaging in intercourse with the rebels have not "amounted to recognition by implication."[93]

VIII. THE LEAGUE AND NON-INTERVENTION

As early as September, 1936, the Spanish representative in the League Assembly pointed out that the Spanish conflict had become a threat to world peace and of concern to the League of Nations. Condemning non-intervention as a "direct and effective intervention on behalf of the rebels," he complained that the "blood-stained soil of Spain is already, in fact, the battle-field of a world war."[94] It was not until November 27, however, that the Spanish government formally invoked Article XI of the Covenant, objecting once more to the "armed intervention" of Germany and Italy. Confronted with the issue at its extraordinary session in December, the Council successfully shelved it by recognizing the work of the Non-Intervention Committee and the efforts of France and England at mediation, and resolving that "every state is under an obligation to refrain from intervening in the internal affairs of another state." Furthermore, it recommended to Council members on the Non-Intervention Committee "to spare no pains to render the non-intervention undertakings as stringent as possible, and to take appropriate measures to ensure forthwith that the fulfilment of the said undertakings is effectively supervised."[95]

Again in May, 1937, the Spanish government appealed its case, presenting in its famous White Book one hundred and one documents confirming "beyond all possibility of denial . . . the participation in the Spanish conflict, on the side of the rebels, of actual contingents of the Italian regular army."[96] This, in the eyes of Spain, constituted "the most scandalous violation . . . of the very

[92] By December 1, 1937, seven states—Japan, Germany, Italy, Albania, El Salvador, Guatemala, and Nicaragua—had formally recognized the Franco régime. Austria and Hungary followed in January. *New York Times*, Jan. 13, 1938.

[93] V. A. O'Rourke in *A.J.I.L.*, July, 1937, p. 413.

[94] *Seventeenth Ordinary Session of the Assembly, Plenary Meetings*, p. 48.

[95] *Minutes of the 95th (Extraordinary) Session of the Council*, p. 19.

[96] *Official Journal, Special Supplement No. 165*, p. 4.

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principles . . . which form the essence and basis of the League of Nations." But once again the Council only supported the work of the Non-Intervention Committee and urged the speedy withdrawal of non-combatant nationals from Spain.[97] In September, 1937, the Assembly heaped insult upon injury by refusing to reëlect the Spanish government to its semi-permanent seat on the League Council.[98]

Legally, there would seem to be no reason at all for League machinery to remain inactive in the Spanish case. While the rebellion as such is purely an internal matter and outside the scope of League action,[99] Article X guarantees the "territorial integrity and existing political independence" of League members against external aggression. Under Article XI also, action is contemplated to safeguard the peace of nations. Germany might therefore, as a non-member, be invited to assume the obligations of membership for the purpose of settling the dispute between Germany, Italy, and Spain.[100] If she should refuse (as she undoubtedly would), and make war against Spain (as she already has done, according to the Spanish government), the sanction system would be applicable. Since Italy has already violated the Covenant, sanctions might be applied against her likewise.

Political expediency, however, frequently transcends juridical interpretation. The sanctions system had been tried and found wanting. Furthermore, the League was faced with Italy's withdrawal from Geneva in case of any action of importance in regard to the Spanish situation.[101] Since, therefore, certain membership differences[102] clearly indicated that more coöperation could be secured in the Non-Intervention Committee than in the Council, the League was probably justified in turning the whole problem over to the former organ. Under both Articles X and XI, the action to be taken by the League is not specified, but apparently is to be adapted to the particular situation at hand. Consequently, as the Swedish government suggested, the proper move was not to set into motion a procedure "parallel to that of the Non-Intervention

[97] *Monthly Summary of the League of Nations*, May, 1937, p. 98.

[98] *New York Times*, Sept. 21, 1937.

[99] Article XV, par. 8, excludes matters of "domestic jurisdiction."

[100] Art. 17.

[101] See *Bulletin of International News*, XIII, p. 495. On December 11, 1937, Italy's intention to withdraw from the League was announced.

[102] See above, p. 242.

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Committee . . . but rather to reinforce its work by giving it the support of the League's authority."[103] As Stanley Baldwin remarked in Parliament, the League could not have done anything more than the Committee had done—though "an ideal League might have."[104]

IX. CONCLUSION

The history of non-intervention, as outlined above, is in some respects a sorry story of an intense desire for peace taxed almost to the breaking point by diplomatic maneuvering, delay, bad faith, and broken promises. Throughout the Spanish crisis, the former Entente powers, Great Britain and France, have attempted to reconcile the divergent views of Russia on the one hand and Italy and Germany on the other, in the hope of preventing the war from spreading beyond the borders of Spain. Their policy has been localization through non-intervention.[105]

This aim has not been accomplished without considerable cost; for Anglo-French policy, intent on maintaining European peace, has bowed regularly in diplomatic defeat to the more aggressive policy of Rome and Berlin. Thus France, confronted with the possibility of being encircled by fascist states, might well have opened her borders and allowed men and munitions to pour into Loyalist Spain. But each time such a possibility seemed imminent the French government, fearful of international repercussions, chose the more conservative policy. Great Britain, likewise, has preferred to grant concessions rather than run any risk of open conflict, even though she realizes that a fascist Spain may prove inimical both to European democracy and to British interests in the Mediterranean. Both governments still hold a trump card, however, for even if General Franco is successful he will probably be forced to borrow money from London and Paris for the reconstruction of Spain, and to the extent that a Franco victory becomes more probable in the future, better relations between France, England, and the Insurgents may be expected to develop.

While France and England have coöperated closely throughout

[103] *Monthly Summary*, May, 1937, p. 98.

[104] *Bulletin of International News*, XIII, p. 468.

[105] In the words of Mr. Chamberlain (June 25, 1937), Great Britain's policy "has been consistently directed to one end and to one end only—namely, to maintain the peace of Europe by confining the war to Spain." *London Times*, June 26, 1937.

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the crisis, the Rome-Berlin axis has functioned even more harmoniously. Ostensibly, its purpose is to keep "Communist poison" from spreading beyond the confines of its parent state, and actually it has maneuvered to isolate Russia and to place Europe under control of the four Great Powers. While the various raw materials of Spain—mercury, copper, iron, pyrites—are undoubtedly important factors, Mussolini has frequently assured Great Britain that Italy has "no territorial or strategic or even economic designs on Spain." Nevertheless, Italy has more stakes there in the form of men, money, and munitions than any other power, and withdrawal might mean a considerable loss of prestige. On the other hand, Germany, while willing to aid her ally, has never been as deeply involved as Italy, and has been restrained from time to time by the wise counsels of the German military staff.

For Germany and Italy, therefore, non-intervention has proved an acceptable policy. They have realized that any considerable increase in the aid extended to General Franco would correspondingly increase the danger of Anglo-French retaliation. But to withdraw from Spain would only insure the defeat of the Franco government, to which they have pledged their support to the end. Consequently, as long as England and France prefer to "ignore facts and cling to pretenses," such a policy "serves German and Italian purposes at minimum risk and expense."[106]

While few people would question the desirability of the general aim of Anglo-French policy (localization), there are many who condemn the instrument (non-intervention) by which the objective has been achieved. It has been argued that non-intervention has operated largely to the advantage of the Insurgents, that it has prolonged the civil war, and that Spain has been sacrificed on the altar of international peace. If we would face cold realities, it is well to envisage the alternative; and the only available alternative to non-intervention (actually controlled intervention) would necessarily have been intervention proper, of the uncontrolled and unlimited sort. In such an event, the Franco government would still have been in an advantageous position, for its fascist allies, because of the distance involved and because of an available surplus of arms and war materials, were much more capable of furnishing arms and men than were the supporters of the Loyalist govern-

[106] F. L. Schuman, "Europe's Balancing of Power," *Events*, June, 1937.

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ment. Thus it is quite likely that without the policy of non-intervention the situation in Spain would not have been greatly different, while the increased friction resulting from unlimited armaments competition and conflicting political ideologies would have increased considerably the danger of a European conflict.

Certainly the existence of non-intervention machinery and the conclusion of various non-intervention accords did much to ease the tension in Europe at critical periods. This was especially true at the time of the negotiation of the original agreement in August, 1936. It was likewise true when the accord relative to volunteers was adopted, even though most of the damage had been done by February 20, 1937, when the arrangement went into effect. Furthermore, the frequent meetings of the Non-Intervention Committee have permitted some sort of coöperation, although even the semblance of harmony was often lacking. Who would deny that it is better to have Europe's diplomats exchange harsh words than not to be on speaking terms at all?

In spite of the obvious defects of non-intervention machinery, one may concur in the repeated assertions of Blum, Eden, Delbos, and Baldwin that the policy of non-intervention has been instrumental in preventing the spread of the Spanish rebellion into a general war. True, trouble in the Mediterranean continues and the "Little World War" drags on to its ultimate conclusion in the mud, snow, and blood of battle-torn Spain. Yet Europe's diplomats have been doing their best to "forget" the civil war; and each month gained has been valuable, since time affords an opportunity for the cooling of Continental political and religious passions and increases the chances of a general European settlement. It is to be hoped that Mr. Eden pointed the way accurately when he remarked (with his eyes on Europe rather than on Spain) that "a war postponed may be a war avoided."

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ELECTIONS IN ALGERIA AND THE FRENCH COLONIES UNDER THE THIRD REPUBLIC

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The representation of colonies in the French parliament is one of the many oddities characterizing France's colonial system. Nothing similar is found in the political institutions of any other European colonial power. This representation is a direct result of the doctrines of the French Revolution, which preached the equality of man irrespective of race, color, or political education. Thus during the years of the National Assembly delegates from Santo Domingo, Martinique, and Guadeloupe were admitted, and on August 22, 1792, all of the colonies were given representation in the national parliament.[1] This equality lasted until the advent of Napoleon and the constitution of the Year VIII, which suppressed the colonial deputies entirely for nearly fifty years. The political idealists of 1848 not only freed all slaves in the colonies, but also gave them the political rights of French citizens.[2] In good Bonapartist tradition, Napoleon III, in 1852, put an end to this political experimentation, and only Algeria participated in the plebiscites of 1852 and 1870.[3] When the Government of National Defense succeeded the Second Empire and by the decree of September 8, 1870, called an election on the basis of the electoral law of March 15, 1849, Algeria and the colonies regained their political representation at Paris; and they have kept it until the present time.

In a number of decrees, the Government of National Defense allotted six deputies to Algeria, two each to the colonies of Martinique, Guadeloupe, and Réunion, and one each to those of French Guiana, Senegal, and French India.[4] The National Assembly, in

[1] Electoral legislation for the colonies can be found conveniently in P. Dislère. *Traité de législation coloniale* (Paris, 1906), Vol. I, pp. 366–369.

[2] In the Antilles, citizenship was reëstablished for the free colored population in 1831 and 1833 after the racial troubles of the preceding years, but the *régime censitaire* prevented any political changes being derived from these decrees. A. Girault, *Principes de colonisation et de législation coloniale* (3rd ed., Paris, 1904), Vol. I, pp. 651–654.

[3] A. Girault, *op. cit.*, Vol. II, pp. 405–407.

[4] The most important decree is that of September 30, 1870, which established the above-mentioned division. It was confirmed by decision of the delegation at Bordeaux on January 30, 1871, and of the government at Paris on February 1 of the same year. The latter, however, added French India, not previously included.

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spite of its monarchist majority, was forced to follow the republican tradition, and through the constitutional laws of 1875 Algeria received three senators and three deputies, while Martinique, Guadeloupe, Réunion, and French India obtained one senator and one deputy each.[5] The republicans and colonial enthusiasts, however, were still not satisfied. Soon after the Senate became republican, legislation was passed giving French Guiana and Senegal the deputies they had lost in 1875,[6] and doubling the representation of Algeria, Martinique, Guadeloupe, and Réunion, as well as adding Cochin-China to the list of colonies having one representative.[7] The number of colonial deputies remained fixed at sixteen until a few years ago, when the Algerian representation was increased from six to nine in 1928, and to ten in 1936, because of increases in population.[8]

Though on the surface the development of colonial representation shows a rather uniform character, a closer investigation reveals variations which do little to increase the French reputation for logic and order. In the first place, not all of the French colonies are administered by the Ministry of Colonies established in 1894. The protectorates of Tunis and Morocco and the League of Nations mandates are controlled by officials of the Ministry of Foreign Affairs, while Algeria, considered a mere extension of France, is governed through the Ministry of Interior. Thus any unity in colonial policy and representation is precluded. Secondly, not logic, but only historical development, can explain why Senegal is represented and not Madagascar, why Cochin-China has a deputy while Annam, Tonking, and Cambodia have to do without representation. It happened that the idea of *la France d'outremer*—the view that the French colonies were a mere extension of the French motherland—was popular only during the French Revolution, in 1848, and during the first decade of the Third Republic. Conse-

[5] The significant laws in this case are those of February 24, 1875, on the Organization of the Senate and of November 30, 1875, on the Election of the Chamber of Deputies.

[6] Law of April 8, 1879. For the rather flimsy arguments of the colonialists de Mahy and Lacascade and the excellent response of the navy minister, Fournichon, see *Journal Officiel, Chambre des Députés, Débats,* June 29, 1876, Vol. III, pp. 196–201; February 26, 1877, Vol. I, pp. 63–77.

[7] Law of July 28, 1881.

[8] Due to the eruption of Mont Pelée and the destruction of the surrounding countryside in May, 1902, Martinique was represented by only one deputy in the legislature of 1902.

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quently, only the remnants of the old French colonial empire and the first two conquests of the nineteenth-century expansion, Algeria and Cochin-China, received the right to send deputies to Paris. In the third place, the same historical development gives the key to the complicated system of electoral rights existing in the colonies. Thus the natives and the freed slaves of the old French possessions, the French West Indies, Réunion, Guiana, Senegal, and French India have electoral rights, while the politically more educated natives of the second French colonial empire, like the Moslems of Algeria and the Annamites of Cochin-China, have not been given the vote.[9]

In other words, the present representation of the colonies in the French parliament is due to three historical factors: (1) The idealists of the eighteenth century and the liberals of 1848, believing in the equality of man and the burning desire of the primitive races to shed their own customs for those of France, gave political rights to all the inhabitants of the French colonies. (2) The Third Republic, deriving its theoretical justification from the doctrines and the examples of the French revolutionary leaders, gladly followed the precedents of 1792 and 1848 in regard to the old French possessions, but in extending political representation to the new colonies of Algeria and Cochin-China it excluded most of the natives from voting. This change in policy cannot be attributed to a new colonial theory. The policy of assimilation still ruled supreme, but the revolts in the West Indies at the end of the eighteenth century and those brought about by the economic crisis of the Sugar Islands in the 1850's had shown the dangers of an over-hasty humanitarianism. (3) After 1881, the opposition of the radicals and the conservatives to the colonial development, as well as the numerous scandals which surrounded the election of deputies outside of France, prevented any extension of the principle of colonial representation. When, after the World War, the colonies regained the favor of France, political rights were not extended to them[10] because the policy of assimilation had been replaced by the policy

[9] See S. H. Roberts, *History of French Colonial Policy* (London, 1929), Vol. I, pp. 78–83.

[10] Except for an outburst of generosity in 1919, which gave citizenship to the natives of Algeria who had served in the army or navy, could read and write French, had been able to obtain a French decoration, or were property owners. Because of this law, the number of registered voters in Algeria, which had increased about 10,000 every four years, jumped from 128,487 to 158,620 between 1914 and 1919.

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of association, which aimed at the development of native civilization and reserved for France merely the supervision of that process.

With such a diversified system of administration, representation, and electoral rights, only one generalization seems possible concerning the twenty colonial deputies, namely, that they and their predecessors are and have been republicans, with the lone exception of the representative of French India in the National Assembly of 1871. This republican sentiment is due to a combination of factors. In the first place, after 1848 Algeria and the colonies became the home of political refugees. Secondly, immigration in the colonies came largely from republican southeastern France. In the third place, the freed slaves and natives who received political rights in 1792, 1848, and 1870 were given no chance to forget that the republicans were their benefactors. And finally, in the colonies where the administrative officials usually have been all-powerful, their influence under the Third Republic has naturally been exerted in favor of republican candidates. Thus the republican and monarchist rivalry which existed in France during the first two decades of the Third Republic did not take place in Algeria and the colonies. Instead, electoral battles turned largely on personal and local, not constitutional, issues. In these personal battles, all means were fair; and since the majority of the voters were politically ignorant natives, force and violence, illegal pressure and stuffed ballot-boxes, were features which appeared in practically every colonial election. It might also be said that the colonial representatives (though excepting the Sugar Islands when the racial question became the sole issue, and Algeria in the late 1880's when the Boulangists introduced anti-Jewish propaganda) have been ministerial deputies, voting for conservative and radical cabinets alike, probably because government subsidies have always been an important item in colonial budgets.

Because of the corruption and violence connected with the electoral farces in the colonies, the French parliament more than once considered suppression of colonial representation.[11] Efforts in this direction, however, were not crowned with success, in spite of the fact that most elections represented a travesty of democracy, and notwithstanding the unrest which the political privileges

[11] *Journal Officiel, Chambre des Députés, Documents Parlementaires*, 1897, Vol. I, pp. 8–9, 208. *Ibid., Débats*, July 9, 1898, Vol. III, pp. 428–429, and July 11, 1898, Vol. III, pp. 464–465.

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of the Senegalese Negroes and the Untouchables of India created among the Arabs and the Annamites, respectively. The main argument in favor of colonial representation seems to have been the possibility of trouble following any curtailment of political rights in the overseas possessions, together with the desire of the French to substantiate their leadership in political democracy by pointing with pride to their colonial representatives in parliament, "unique in colonial annals."[12] These psychological and sentimental reasons were used in defense of this extraordinary political system up to the World War, during which the man-power and the economic resources of the colonies came to be considered an essential factor in French security and prosperity. Since that time, no further defensive arguments have been needed, for anti-colonial sentiment, formerly the essence of patriotism, has come close to being considered treason.[13]

No matter what the theoretical justification of colonial representation in parliament, the importance of the colonial deputies in the political development of the Third Republic is far greater than commonly supposed. Especially since the electoral privileges of Algeria and the colonies are certainly not beyond dispute, it seems worth while to point out some of the important occasions on which the votes of the colonial deputies were the deciding factor. In the National Assembly in 1875, twelve of the fifteen colonial votes were cast in favor of the famous Wallon amendment, which was passed by a single vote. In 1885, the Tonking credits, finally approved on December 24, by 273 to 263 votes, obtained the support of fifteen of the sixteen colonial deputies, and consequently made possible the addition of the most valuable part of the French colonial empire. The *bloc* of the Lefts was saved from complete disintegration on January 13, 1905, when the advanced republicanism of the colonies accounted for thirteen of the 291 votes cast for the Combes ministry, while only two of these deputies voted with the minority of 281. When, on March 26, 1924, the doom of the "national" majority was foreshadowed by the temporary overthrow of Poincaré by a vote of 271 to 264, eight of the colonial representatives joined the majority and only one voted

[12] If this argument were taken literally, the French colonies, with their population of approximately 63 millions, should have 460 senators and 897 deputies to France's 307 senators and 597 deputies.

[13] For the arguments for and against colonial representation, see S. H. Roberts *op. cit.*, Vol. I, p. 70; A. Girault, *op. cit.*, Vol. I, pp. 701–708.

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for Poincaré. Thus without the colonial deputies the development of the Third Republic might have taken a direction vastly different from that actually followed.

Algeria. This area had six representatives in the National Assembly, three from 1876 to 1881, and since that time again six deputies until 1928, when the increase in population raised the Algerian representation to nine, and in 1936 to ten. The four to five million natives, Arabs and Berbers, have a right to vote for these deputies only in so far as they surrender their personal status and become naturalized. Very few, however, have taken advantage of this opportunity to become electors, for doing so involves renunciation of the civil, religious, and criminal laws of the Koran and makes the Arab an outcast among his co-religionists.[14] Consequently, until the enthusiasm of victory in 1919 gave the rights of citizenship to about 30,000 natives irrespective of their personal status,[15] the Algerian electorate was composed mainly of three classes of voters: (1) French immigrants and their descendants; (2) naturalized foreigners; and (3) native Jews. The number of actual Frenchmen is difficult to ascertain, since the statistics include naturalized foreigners. It is probably safe to assume that a little more than half of the number usually cited are actually French.[16]

The naturalized foreigners are largely Spaniards, Italians, and Maltese. Most of the Spaniards are peasants, and since continuance of this status has not necessitated French citizenship, only a few of them have changed their nationality. Consequently, the Spaniards as a whole have not created an electoral problem. The main trouble arises from the naturalization of Italians, who have taken out citizenship papers mainly in order to continue to earn their livelihood as fishermen, since the law of 1889 permitted only French controlled and manned ships to fish in French territorial waters. It is not surprising that the votes of these "Frenchmen" have often been attacked, especially since many of them reside in Algeria only during the fishing season and some even perform their military service in Italy.[17] Moreover, since the short yearly resi-

[14] In 1890, only 736 natives had been naturalized; in 1906, their number had risen to 1,362.

[15] Law of February 6, 1919. [16] S. H. Roberts, *op. cit.*, Vol. I, p. 235.

[17] *Journal Officiel, Chambre des Députés, Débats*, November 8, 1898, Vol. IV, pp. 59–75; November 11, pp. 84–99; March 3, 1899, Vol. I, pp. 781–795; *ibid., Documents Parlementaires*, 1899, Vol. I, pp. 611–699.

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dence of these fishermen makes it possible for others to vote in place of these practically unknown citizens, and since their votes seem to be more easily purchasable than those of others, the naturalized Italians constitute one of the main Algerian electoral problems.[18]

The native Jews, however, have been the real storm-petrel of Algerian politics. They were naturalized *en masse* on October 24, 1870, by a decree of the delegation at Tours, usually called the Crémieux decree, which gave these people full rights of citizens without forcing them either to renounce their personal status as based on the Old Testament or to show a reading or writing knowledge of French. It seems possible that this was a rather unwise measure, for the political education of the vast majority of these Algerian Jews was rather deficient, and since they were looked down upon by the native Arabs and Berbers, this sudden elevation can be counted among the important secondary causes for the bloody revolt of 1871. However, to consider this decree merely the result of the temporary influence of Crémieux, an influence exerted in favor of his co-religionists, seems hardly justified, for a project for such naturalization had been worked out by Napoleon III and submitted to the Conseil d'État by Ollivier in 1869.[19] Nevertheless, the Thiers government believed that the naturalization should be restricted to those native Jews who resided in Algeria before the conquest in 1830 or were born of parents fulfilling this requirement.[20] Against the votes of these Jews, the losing deputies have always protested, insisting that they were purchased by the opposition or that they were cast in a block under the orders of the rabbis.[21] The charge of corruption was probably not justified, since the deputy Thomson, against whom it was levelled most frequently, had married a granddaughter of Cré-

[18] *Ibid.*,

[19] *Journal Officiel, Chambre des Députés, Débats*, February 21, 1895, Vol. I, pp. 594–595, 599–603.

[20] Decree of October 7, 1871. To believe the deputy Forcioli, Thiers even wanted to abrogate the Crémieux decree entirely, but was prevented from doing it because he needed the support of the Jewish bankers in floating the loans for the German indemnity. *Ibid.*, February 21, 1895, Vol. I, p. 580; *Ibid., Documents Parlementaires*, 1899, Vol. I, p. 643.

[21] *Ibid., Débats*, November 19 and 23, 1885, Vol. III, pp. 45–50, 72–89; December 12 and 20, 1893, Vol. V, pp. 331–334, 483–491; November 4, 8, and 11, 1898, Vol. IV, pp. 37–39, 59–75, 84–99; June 19 and 23, 1902, Vol. II, pp. 229–230, 266–270.

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mieux and hardly needed to buy the Jewish votes.[22] The influence of the religious leaders may have been something, but since only 7,739 of the 88,000 registered voters in Algeria in 1898 were native Jews,[23] it has certainly been exaggerated. Nevertheless, the Marquis de Morés and his fellow anti-semites were able to convince a majority of the Algerian voters that the Jews were the main cause of their economic and political troubles, with the result that the 1890's were filled with bloody pogroms and that the anti-Jewish party carried four of the six electoral districts in 1898. After the Dreyfus Affair and a return of prosperity, however, the movement disappeared almost completely.[24]

Because Algeria became a place of refuge for the 1848 idealists and received most of its immigrants from republican southeastern France and the politically indifferent Corsica, a strong republicanism has pervaded its whole political development. In the National Assembly, the Algerian deputies belonged to the advanced republican guard, but, following the evolution of Gambetta, they became more moderate in the late 1870's and the 1880's. This more conservative tendency, however, was not characteristic of the Algerian voters, but merely of their deputies; for from 1889 onwards the moderates were forced to divide political power with the radicals or court defeat by a combination of radicals and Boulangists.[25] In 1898 came the anti-Jewish upheaval which swept all but the permanent fixtures of Algerian politics, Thomson and Étienne, out of office. Again the advanced republicanism of the colony asserted itself, for, in order to preserve their chances of reëlection the newly elected nationalists were forced not to oppose the anticlerical legislation of the Waldeck-Rousseau cabinet. Nevertheless, moderates and radicals were again victorious in 1902 and have kept their supremacy ever since. In general, the Algerian deputies might be called ministerialists, which can be attributed partially to the large subventions and the administrative power of the metropolitan government;[26] but whenever this

[22] *Ibid.*, November 19, 1885, Vol. III, pp. 45–50.

[23] *Ibid.*, May 15, 1899, Vol. II, pp. 128–137.

[24] The anti-semites had to call themselves anti-Jews in Algeria, in order not to offend the Arabs whose champions they tried to be.

[25] In Constantine, where this division was effected in 1889, it worked well until 1898, while in the department of Algeria, where the moderates refused to compromise, a combination of radicals and anti-Jews was victorious in 1893.

[26] Representative of this ministerialism are men like Étienne, deputy of Oran from 1881 to 1919, and Thomson, representative of Constantine from 1877 to 1928,

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ministerialism leads to the support of a government too ardently conservative, the native radicalism soon asserts itself and the unfortunate deputy is promptly relegated to oblivion.[27]

The Sugar Islands: Martinique, Guadeloupe, and Réunion. These three colonies are the most important remnants of the first French colonial empire, now fallen into a state of stagnation and decline. In the nineteenth century, two events dominated their political and economic development: the rise of the beet sugar industry and the emancipation of the slaves. When, after 1882, beet sugar products flooded the world market, the price of sugar was permanently lowered, except for the World War interlude, and the prosperity of these monoculture islands was definitely ruined. The crisis was made worse by a labor shortage, caused by the liberation of the slaves through the Schoelcher decree of April 17, 1848. On account of this situation, the cane-sugar planters of the Antilles and Réunion were unable to compete with their more fortunate rivals of Hawaii, Cuba, Java, and Puerto Rico. To add to the troubles of these islands, frequent hurricanes made each harvest problematic, and the inclusion of these colonies in the French tariff system in 1885 and 1892 cut them off from their natural markets in America and Asia. Moreover, the French administration has made practically no effort to encourage a change in production from sugar to coffee or cocoa, such as might have alleviated the economic depression.[28]

Politically, the development of these colonies is controlled by the fact that the white citizens are outnumbered about forty to one by the freed slaves and their descendants. Undaunted by the revolts brought about by the hasty emancipation of the Negroes during the French Revolution, the process was repeated in 1848 and immediately resulted in a labor shortage and an attempt of the former slaves to seek revenge upon their recent masters for their

who voted for radical and moderate governments alike, for Bourgeois and Méline in the 1893 legislature, for Méline and Waldeck-Rousseau in the one of 1898, for Combes and Rouvier in 1905, for Barthou and Doumergue in 1913, though Étienne abstained from voting on the first Doumergue vote.

[27] Recent political development illustrates this tendency. In the 1928 legislature, four Algerian deputies voted consistently for Tardieu and Laval and against the radical cabinet of Chautemps and Steeg. Two of these deputies were defeated in 1932, and in 1936 only the second district of Oran, long the least radical part of Algeria, elected a conservative deputy.

[28] For an excellent account of the problems of these colonies, see S. H. Roberts, *op. cit.*, Vol. II, pp. 499–509.

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past sufferings.[29] This racial crisis became especially acute in the Antilles, where the *code noir*, with its refined cruelty, had been enforced with the utmost abandonment. In Réunion, more humane conditions had existed, and consequently blacks and whites settled down in a more harmonious relationship. Though the Negroes were in a majority in these colonies, political leadership did not pass to them, for they were both lazy and politically ignorant. Their rightful place in the Antilles was assumed by the mulattoes, who drove just enough Negroes to the polls every four years to win the elections and to discourage the whites from any participation in politics.[30] In Réunion, however, the conservative white planters were able to keep control for a longer time, losing it definitely only in 1914.

Because the emancipation of the Negroes had been the work of the republicans, no candidate not representing this political tendency had a chance before an electorate which owed its existence to the idealism of the heirs of the French Revolution. Consequently, in the National Assembly these colonies had six radical republican representatives, including Schoelcher, the liberator of 1848; in the legislatures of 1876 and 1877, three deputies of the same political tendency represented these islands. But after 1881, when the republican majority definitely split into conservatives, moderates, and radicals, each of the colonies followed a separate political development.

In Réunion, the rise and fall of political bosses determined the course of politics. In the 1870's and 1880's, the boss of the islands was the republican deputy de Mahy, who, relying on the support of the white planters, turned conservative about 1885. His fellow deputy followed his example. In 1893, however, the radical Brunet was able to break de Mahy's control in the first electoral district, which he won completely away from the control of the planters during his term of office, lasting until 1905, when he was elected to the Senate. His place in the Chamber of Deputies was taken by the radical Gasparin, who built up a political machine able to resist all attacks until the present time. In 1914, he was able to wrest the second electoral district from the control of the conservatives, who had been weakened by the death of de Mahy in 1909.

[29] Contre-Amiral Aube, *La Martinique* (Paris, 1882), pp. 83–85.

[30] S. H. Roberts, *op. cit.*, Vol. II, pp. 504–505; P. Gaffarel, *Les colonies françaises* (6th ed., Paris, 1899), pp. 133–134.

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Since then, Gasparin and his allies have ruled supreme. A sample of their strength was revealed in 1924, when the deputy Boussenot attempted a revolt which promptly cast him into political oblivion. The electoral practices in this colony have been characterized by extreme violence, especially during the years 1906 to 1914 when Gasparin was extending his power. Complaints about governmental interference, absentee voting, stuffed ballot boxes, falsified electoral reports, and attempts at corruption abounded at every consultation of this Negro electorate.[31] In 1906, one of the candidates was incapacitated by a well aimed stone,[32] and in 1914 at least five people were killed by paid gangs in the service of opposing candidates.[33] In spite of all these irregularities, no deputy of Réunion has ever been invalidated, probably because the French deputies realized that the peculiar character of politics in this colony would hardly be affected by such a process. Thus the key to the political development of Réunion lies in the rivalries of political bosses. Personal and local issues, not political tendencies as they existed in France, have determined the electoral results.[34]

In Martinique, the political bosses of the late nineteenth century were men like Godissart, Hurard, and Deproge, all of whom assured the native mulattoes their political jobs.[35] Having political control of the islands, their next aim was economic control, and for this purpose they naturally adopted the ideology of the extreme left. Against this policy, which tended to wipe out the white planters, the latter revolted successfully in 1898, when the conservative republicans Duquesnay and Guibert were elected deputies. A racial war in 1899 and 1900 was the result of this victory of the whites, culminating in bloody strikes and almost becoming the occasion for the overthrow of the Waldeck-Rousseau cabinet at the beginning of its career.[36] In 1906, however, the second electoral district, which had been practically wiped out by the eruption of Mont Pelée on May 8, 1902, was won back by the mulatto party

[31] *Journal Officiel, Chambre des Députés, Débats*, February 22 and 28, 1907, pp. 1558–59, 639–651; July 1, 5, and 6, 1910, Vol. II, pp. 489–496, 537–539, 565–567; July 7, 1914, Vol. II, pp. 461–463; March 30, 1920, Vol. I, p. 673.

[32] *Ibid.*, February 28, 1907, Vol. I, pp. 639–651.

[33] *Ibid.*, July 7, 1914, Vol. II, pp. 462–463.

[34] *Ibid.*, July 5, 1910, Vol. II, p. 537.

[35] *Ibid.*, March 26, 1900, Vol. I, pp. 1221–22.

[36] *Ibid.*, February 12 and 13, March 26, 1900, Vol. I, pp. 497–498, 526, 530, 1220–41.

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after a wild and violent election,[37] and in 1910 Duquesnay's influence in the first district was definitely broken. Ever since the colored party gained control, whatever change has occurred in the representation of the colony can be attributed to intra-party fights. The second district has remained consistently in the hands of deputies of socialist leanings, while the representatives of the first district have shown more moderate tendencies. The electoral practices in Martinique are similar to those in Réunion, often being challenged by complaints about violence, false electoral lists, and administrative interference.[38] Until 1902, none of the elections was decided at the first balloting, since a quarter of the electorate could not be driven to the polls. Since then, the electoral attendance has improved a little, but only in 1919 and 1924 did it exceed sixty per cent.

Though dominated by the same sort of race war as Martinique, Guadeloupe, has never experienced under the Third Republic even a temporarily successful revolt of the whites. From 1881 to 1906, the mulatto Gerville-Réache acted as the political boss of the colony. The personal rule of this radical deputy was challenged successfully for the first time in 1898, when the second electoral district was captured by a nominal socialist. In 1906, Gerville-Réache himself was defeated by the editor of the Paris socialist newspaper *La Petite République*, Gerault-Richard, who was able to unite all of the people who considered that they had grievances against the perennial deputy. Since 1912, Candace has been the most influential politician in Guadeloupe, being consistently re-elected through 1936. The other electoral district has been controlled by nominal radical-socialists, whose radicalism, like that of Candace, is greatly determined by the political tendency controlling the metropolitan government. Electoral practices are similar to those in the other Sugar Islands, with broken voting urns, violent fights between the partisans of the candidates, and administrative interference characterizing most of the elections.[39] A new touch, however, was added by Gerault-Richard in 1910, when he travelled through the islands distributing watches, medals, and beads to his colored followers and organized the unemployed

[37] *Ibid.*, November 29, 1906, Vol. III, pp. 496–499.

[38] *Ibid.*, November 29, 1906, Vol. III, pp. 496–499; June 9 and 11, 1914, Vol. II, pp. 134, 139–141; March 31, 1920, Vol. I, pp. 686–688; June 4, 1924, Vol. II, pp. 34–35.

[39] *Ibid.*, June 16 and 24, 1906, Vol. II, pp. 241–243, 357–359; July 9, 1914, Vol. II, pp. 562–566; March 2, 1920, Vol. I, pp. 324–325.

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as a private body-guard for protective and parading purposes as well as for intimidation.[40]

French India. Besides Algeria and the Sugar Islands, only the five French towns of India—Pondichery, Chandernagore, Mahé, Karikal, and Yanaon—have been represented continuously in the French parliament since 1871. Of all the colonial elections, those of India represent the greatest travesty of democratic principles. All of the 200,000 Indians of these towns became French citizens in 1848, and after the interlude of the Second Empire their privileges were restored in 1870. Consequently, Hindus and Moslems, Brahmans and Sudras, were supposed to vote peacefully together and to weigh carefully the differences between a Legitimist and an Orléanist or a Radical and a Moderate Republican. These pious hopes were not realized. It must be remembered that to Hindus imbued with the caste system and to Moslems reared in the family tradition the European principle of equality was incomprehensible. Moreover, since religious traditions dominated their lives in matters of justice and government, the idea of the secular state seemed to include a denial of the divine. Under these conditions, it was not surprising that elections in the French cities could before long be counted among the most recent of the many mysteries of India.

Usually fifty to sixty thousand electors were registered in French India, and except in the elections of 1876, 1877, and 1889, more than thirty thousand of these were reported to have voted. This remarkable result was not due to an inordinate love among the Hindus for the voting process, but was brought about by one of the best organized systems of corruption and violence existing anywhere in the world. The political boss of India from 1870 until his death in 1908 was Madou-Chanemouganelayoudamodéliar, better known as Chanemougam.[41] In 1871, this merchant's favor fell upon the son of a former governor of India, Desbassayns de Richemont, who happened to be a monarchist.[42] After the latter's promotion to the Senate in 1876, however, moderate republicans became the consistent choice of Chanemougam. Godin was the representative from 1876 to 1881, when the number of his supporters suddenly dropped from 15,314 to 463. A similar fate awaited Pierre Alype, who represented India from 1881 to 1898. In the latter year, he lost the favor of Chanemougam, with the result

[40] *Ibid.*, June 16 and 17, 1906, Vol. II, pp. 240–241, 251–257.

[41] *Ibid.*, December 4, 1902, Vol. III, pp. 706–710.

[42] G. Hanotaux and A. Martineau, *Histoire des colonies françaises et de l'expansion française dans le monde* (Paris, 1934), Vol. V, pp. 307–308.

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that only nine of the 26,175 electors who had supported him in 1893 remained loyal five years later. Henrique-Duluc was easily victorious in 1898 and 1902, but in 1906 Chanemougam's machine ran into its first real trouble in thirty-five years. Lemaire, the governor of India from May 27, 1904, to March 10, 1905, was recalled at the latter date, but not removed outright. His administrative influence was apparently still strong enough to win over some of the electoral bosses, thus making the electoral results somewhat closer than ever before. The electoral officials of India, having to choose between the administration and Chanemougam, extricated themselves from the dilemma by proclaiming neither candidate as deputy, thereby leaving it to the Chamber of Deputies to decide whether the result of 17,757 votes for Henrique-Duluc and 16,654 for Lemaire was acceptable. The Chamber, however, was able to subtract 3,500 from the total of Chanemougam's candidate, and then proclaimed Lemaire the lawfully elected deputy.[43] The former governor was unable to repeat this victory, although he tried in 1910, 1914, and 1919. Sadassivam, the successor of Chanemougam at the latter's death in 1908, imported armed gangs from British India, and by killing and wounding about 150 obstreperous electors was able to assure the victory of Paul Bluysen, the deputy from 1910 to 1924.[44] Angoulevant, a former governor, became the Indian representative in 1924, but was quickly dropped in 1928, when he received only 3,829 votes as compared with 35,070 in 1924. Since that time, the political bosses of French India have been successful in fending off any serious opposition.

Since none of the deputies who have represented India in the French parliament have known any of the dialects spoken by the people of the five towns, electoral campaigns are a useless refinement in the district, where in 1898 only 500 of the 60,000 registered voters were Europeans.[45] Most of the candidates do not even go to India for the electoral period. All the arrangements are usually left to the local bosses, who prepare the electoral lists, draft the "right" people to supervise the elections, stuff the ballot boxes at the proper moments,[46] and hire gangs if necessary to scare the

[43] *Journal Officiel, Chambre des Députés, Débats*, March 4, 11, and 15, 1907, Vol. I, pp. 697–701, 790–791, 807–816.

[44] *Ibid.*, July 1 and 5, 1910, pp. 490–492, 530–534.

[45] *Ibid.*, July 11, 1898, Vol. III, pp. 466–468.

[46] According to the deputy d'Estournelles, the "great elector" did not even

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opposition. A decree of April 8, 1898, which tried to reform Indian politics by assigning two government interpreters with police powers to each voting *bureau*, failed to bring about any improvement, serving merely to make it more difficult to prove the existence of frauds.[47] Thus India has continued its native electoral practices undisturbed, with violence, death, and fraud as much a common occurrence as before 1898,[48] and the Indian deputies have continued to support any French government which has given the proper satisfaction to their electoral bosses.

Guiana and Senegal. Though these two colonies had deputies in the Convention of 1792, the 1848 assemblies, and the National Assembly of 1871, the latter believed that electoral districts having only 5,737 and 4,277 registered voters should be abolished.[49] The republicans and the colonial enthusiasts, however, were able to revive the representation of Guiana and Senegal in 1879, and since that time the few hundred Frenchmen in these colonies have agreed or fought among themselves for candidates selected for purely personal and local reasons. At the same time, they have paid or forced the natives to vote for these favorites.

French Guiana has never had more than 5,000 voters out of a population of 44,000.[50] This electorate is composed of a few hundred white people, mostly government officials, and the descendants of the freed slaves of 1848 or more recent colored immigrants from the Antilles, who have settled mostly in the coastal towns. In fact, almost the entire electoral process takes place at Cayenne, a town of ten thousand inhabitants at the present time. From 1879 to 1898, Franconie was in control of the electoral situation. His temporary flirtation with Boulangism in the 1880's and his later conversion to socialism brought about an electoral revolt which sent the more moderate Ursleur to the Chamber in 1898 and 1902, but ended in another victory for Franconie in 1906. Since that time

bother in 1898 to put the ballots in the boxes, but simply reported fictitious results. *Ibid.*, July 11, 1898, Vol. III, pp. 464–466.

[47] *Ibid.*, December 4, 1902, Vol. III, pp. 706–710.

[48] *Ibid.*, December 2, 1893, Vol. V, p. 191; July 8 and 11, 1898, Vol. III, pp. 408–409, 464–468; December 4, 1902, Vol. III, pp. 706–710; March 4, 11, and 15, 1907, Vol. I, pp. 697–701, 790–791, 807–816; July 1 and 5, 1910, Vol. II, pp. 490–492, 533–534; June 22, 1914, Vol. II, pp. 274–276; March 2, 1920, Vol. I, pp. 325–326; July 31, 1924, Vol. II, p. 648.

[49] *Journal Officiel, Chambre des Députés, Documents parlementaires*, 1876, Vol. IV, pp. 239–243.

[50] Of these 44,000 inhabitants, about 6,000 are prisoners, 3,000 are natives living in impenetrable forests, and over 10,000 are gold miners without a permanent residence.

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deputies, affiliated more or less with the Radical party, have fought among themselves for the favor of the two and a half thousand electors necessary for election, often resorting to fraud and violence to obtain the desired result.[51]

At Senegal, the electoral practices are the same as at Guiana, with officials and representatives of the French commercial houses in the colony controlling the voting. The process is somewhat complicated, however, by the fact that only the natives of four communes—Saint Louis, Rufisque, Gorée, and Dakar[52]—have received electoral rights.[53] The electoral process consists of obtaining the support of the majority of the local negro chiefs who will lead their followers *en masse* to the voting places, where open voting has occurred at times to assure their employers that they were obtaining their money's worth.[54] From 1879 to 1893, republicans faintly radical were elected in this manner, but during the following two legislatures the local merchants brought about the election of conservative republicans. Since 1902, only radicals have represented this colony. In 1914, an interesting problem arose concerning the election of the colored deputy Blaise Diagne, who as a native of Senegal possessed electoral, but not political, rights. Moreover, he had not performed the military service demanded of all deputies by the law of August 14, 1893.[55] These technicalities, however, were waived in favor of Diagne, the first native deputy elected against the wish of the commercial interests of the colony. Constantly reëlected since that time, Diagne seems to have made his peace with the local powers, for his parliamentary record shows him to be a good ministerial deputy and his local opposition has shifted from the right to the left.

Cochin-China. The electoral problem in this colony is simplified by the fact that the number of registered electors has never reached 5,000. No deputy has every received more than 1,566 votes, the all time high reached in 1936. The district was established in 1881 when France controlled only the southern tip of Indo-China, and

[51] *Journal Officiel, Chambre des Députés, Débats,* March 30, 1920, Vol. I, pp. 673–674; July 11, 1924, Vol. II, pp. 393–394; July 6, 1928, Vol. II, pp. 539–540.

[52] Gorée was amalgamated with Dakar in April, 1929.

[53] S. H. Roberts, *op. cit.*, Vol. I, p. 81.

[54] *Journal Officiel, Chambre des Députés, Débats,* July 7 and 9, 1898, Vol. III, pp. 366–367, 428–432.

[55] *Ibid.*, July 7, 1914, Vol. II, pp. 463–465. In 1916, the natives of the four communes were made full-fledged citizens, but the unrest created by this law among the white Arabs and the other natives led to the revocation of the favor in 1922. S. H. Roberts, *op. cit.*, Vol. I, pp. 314–316.

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consequently the protectorates of Tonking, Annam, Cambodia, and Laos are not represented in the French parliament. The electoral right was limited, as in Algeria, to French residents, officials, and naturalized natives. Of the latter, there are very few, and the active voters seem to be mainly the French officials of Saigon and environs.[56] Their choice has usually fallen upon rather conservative republicans, among whom the former governor of Indo-China, Le Myre de Vilers, deputy from 1889 to 1902, and the former *resident supérieur* of Cambodia, and Outrey, representative from 1914 to 1936, enjoyed the longest tenure of office and also were the most conservative deputies. An attempt of dissident candidates to break the control of the French officials of importing natives from French India proved abortive, when the Conseil d'État ruled that their electoral rights were effective only on Indian soil.[57] Except for occasional complaints about administrative and financial pressure,[58] the elections in Cochin-China are rather uneventful, but their political importance is somewhat vitiated by the lack of a sizable electorate.

In conclusion, it may be said that, judging by the few elections which have been contested, electoral customs in the French colonies must have improved greatly during the last decade. If the improvement is genuine, and not simply a matter of resignation, the electoral experiment of the French among their colonial subjects seems somewhat justified. Nevertheless, before this experiment can be called a success, the French will have to solve the problems of native electoral rights in Algeria and Cochin-China, as well as the question involving the representation of the as yet politically unprivileged parts of their empire. As long as the two policies of assimilation and association coëxist, colonial representation will add to the difficulties of the French in their overseas possessions. No amount of reasoning will convince the Arabs and Berbers that their failure to receive electoral rights which have been given the Senegalese is warranted, and a similar situation disturbs the people of Annam, Madagascar, Tahiti, and many other parts of the empire. In the solution of these problems lies the future of colonial representation.

[56] S. H. Roberts, *op. cit.*, Vol. II, p. 452.

[57] *Journal Officiel, Chambre des Députés, Débats*, October 30 and November 5, 1888, Vol. IV, pp. 282–283, 297–307.

[58] *Ibid.*, February 26 and March 1, 1886, Vol. I, pp. 323–324, 400–415; July 10, 1902, Vol. II, p. 695; July 9, 1914, Vol. II, p. 562.

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CONSTITUTIONAL LAW IN 1936–37

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1936

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The 1936 term of the Supreme Court will probably be rated a notable one. This is due both to the Court's own work, and to certain extraneous occurrences which could hardly fail to have some impact upon it. In any attempt to evaluate the work of this term, one should bear in mind the following facts: First, a month after the Court convened President Roosevelt was reëlected by one of the most impressive popular and electoral majorities in our political history. Second, in February the President submitted to Congress his proposal for the reorganization of the Supreme Court, including the enlargement of its membership by the addition, up to fifteen, of a new justice for every one remaining on the Court beyond the age of seventy. This proposal aroused violent opposition, the debates on it continued for many months, and ultimately the plan was defeated largely through the efforts of the President's own party. The discussions on this proposal were going on during much of the time in which the Court was sitting. Third, in every case in which New Deal laws were attacked, they were held valid. These results were accomplished in many instances by five-to-four margins, and in the Minimum Wage Case by a five-to-four reversal of a previous five-to-three decision. It may be added that there were thirteen five-to-four decisions on constitutional questions, one five-to-three decision, and one four-to-three decision. These facts are spread upon the record as part of the background of the Court's work. No suggestion is made as to what inferences, if any, may be drawn from them.

A. QUESTIONS OF NATIONAL POWER

I. THE COMMERCE POWER

(1) *The Railway Labor Act Case.* Under the Transportation Act of 1920, the railroads were returned to private operation. The act created a Railway Labor Board with power to intervene in railway labor disputes, conduct investigations, make findings as to the merits of the controversy, and issue orders. The Board assumed that it had power to enforce its orders, but in Pennsylvania R. R. Company v. United States Railway Labor Board[1] the Supreme Court held that the powers granted were merely persuasive and not coercive. There is "no constraint upon them [the parties to the dispute] to do what the board decides they should do except the moral constraint . . . of publication of its decisions." To meet this

[1] 261 U.S. 72, 1923.

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situation, Congress passed in 1926 the Railway Labor Act creating the United States Board of Mediation. This law was given teeth. The arbitration of railway labor disputes remained voluntary, but an arbitral award made by the Board of Mediation was enforceable in the courts. The statute specifically recognized the right of employers and employees to deal with each other through representatives of their own choosing, and it forbade "interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other." This act was held constitutional in Texas and N. O. R. Co. v. Brotherhood of Ry. & S. S. Clerks.[2] The act of 1926 was further strengthened by amendment in 1934. "Yellow dog contracts" (contracts under which workmen agree not to join labor unions) are forbidden. The right of workmen to organize is more adequately guaranteed. Railroads are forbidden to interfere in any way with the labor organizations of their men or to form or give support to unions. Complete freedom in the selection of representatives for collective bargaining is guaranteed. The National Mediation Board is set up to replace the United States Board of Mediation. When disputes arise, the Board has power to investigate and to certify the name of the organization which is authorized to represent the employees. The railroads are legally bound to "treat with the representatives so certified," although there is, of course, no compulsion to reach an agreement.

In Virginian Railway Company v. System Federation No. 40,[3] the validity of this act was attacked. A dispute had arisen between the railroad and the Federation. The National Mediation Board had certified the Federation as the representative of the shop craft employees to deal with the railroad. The railroad refused to treat with the Federation, and an injunction was sought to compel it to do so and to cease to interfere with the free choice of representatives by this group of employees.

In a unanimous opinion, written by Mr. Justice Stone, the validity of the Railway Labor Act is upheld and the lower court's order granting the desired injunction is sustained. The opinion may be summarized as follows: (a) The act of 1934 was clearly intended to be mandatory. It is true that it does not compel the parties to a labor dispute to reach an agreement, but it does compel them to treat with each other in an effort to reach such agreement. (b) This is a proper case for relief in equity. (c) The act itself is a valid exercise of the commerce power. The workmen involved are what is known as "back shop" men engaged in various forms of repair service. Their work, however, is intimately connected with the whole process of interstate transportation and forms a vital part of it. Strikes in the shops would seriously cripple interstate transportation. (d) The statute does not deny due process of law. The exercise of the

[2] 281 U.S. 548, 1929. [3] 300 U.S. 515, 1937.

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commerce power is not arbitrary nor unreasonable. The act may be distinguished from the so-called "Anti-Coercion Act" invalidated in the Adair case[4] on the ground that the present statute does not interfere with the railroads' right to select or dismiss individual employees. (e) The order of the National Mediation Board recognizing the Federation as the true representative of the shop men was not rendered void by the fact that in the election held to determine the choice of the men for this purpose the Federation received the support of a majority of those voting, but not a majority of all the men employed. This is held to be a proper and effective choice. (f) Finally, the Norris-LaGuardia Act restricting the use of injunctions in labor disputes was intended to apply to wholly different situations and is inapplicable here.

(2) *The National Labor Relations Act Cases.* Prior to 1933, federal efforts to deal with labor disputes were confined to the field of railroad transportation. In the National Industrial Recovery Act, however, bad labor conditions were declared to affect interstate commerce adversely, and the codes of fair competition set up under the statute were required to guarantee reasonable hours and wages, to outlaw "yellow dog" contracts, and to forbid child labor. To deal with labor disputes, the President set up simultaneously by executive order a National Labor Board,[5] and this was replaced in 1934 by a National Labor Relations Board. These bodies were badly organized, equipped with insufficient powers, and managed to accomplish very little. They passed out of the picture when the N.I.R.A. was invalidated in the Schechter case.[6]

In 1935, Congress passed the Wagner Labor Relations Act, the first genuinely regulatory federal statute to deal with the relations between labor and capital. The act begins with a statement of policy. It is the policy of the act to encourage collective bargaining, the protection of self-organization by employees, and the designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of employment. These measures are effective means of preventing the burdening and obstructing of interstate commerce by strikes and labor disputes. Such strikes and labor disputes have the effect of (a) impairing the efficiency and safety of operation of the instrumentalities of interstate commerce, (b) interrupting the current of commerce, (c) restraining or controlling the flow of goods in interstate commerce or the prices of such goods, and (d) causing the diminution of employment and wages in such volume as to disrupt the markets for goods which move in inter-

[4] Adair v. United States, 208 U.S. 161, 1908.

[5] This first Board was created by a press release from the White House and was later supported by an executive order.

[6] Schechter v. United States, 295 U.S. 495, 1935. For comment, see this REVIEW, Vol. 30, p. 58.

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state commerce. Inequality of bargaining power between labor and capital obstructs the flow of commerce and aggravates recurrent business depressions by depressing the wage rates and the purchasing power of wage earners. Finally, the protection by law of the right of employees to bargain collectively promotes the free flow of interstate commerce.

The policy thus defined is made effective by the following methods: (a) A number of specific "unfair labor practices" by employers are defined in the act. These include interference with the freedom of self-organization by workmen or with the formation of labor unions for the mutual benefit of the men; the domination of or interference with a labor union, or the giving to it of financial support; discrimination in regard to wages or tenure of employment for the purpose of encouraging or discouraging membership in a union; discharging or discriminating against workmen for filing charges or giving evidence under the provisions of this act; and refusing to bargain collectively with the accredited representatives of employees. (b) The act creates a National Labor Relations Board, an independent agency with power to investigate complaints of unfair labor practices and to issue "cease and desist orders" enforceable in the courts. This, it will be observed, is closely similar to the power given to the Federal Trade Commission to prohibit unfair competitive trade practices.

Constitutional attack upon the Wagner Act reached the Court in five cases. Three of these involved the application of the statute to employers engaged in manufacturing goods for the interstate market, and these are the most significant of the group. The most striking of the three is National Labor Relations Board v. Jones and Laughlin Steel Corporation.[7] The company had discharged some of its men because of their labor union activities, and the Board had ordered it to reinstate these men and to cease such discrimination. The validity of the statute and of the Board's order was upheld in a five-to-four decision, Chief Justice Hughes speaking for the majority. He points out that the company is the fourth largest producer of steel in the United States, having under its control in one integrated system all phases of production and distribution. "They draw in the raw materials from Michigan, Minnesota, West Virginia, Pennsylvania, in part through arteries and by means controlled by the respondent; they transform the materials and then pump them out to all parts of the nation through the vast mechanism which the respondent has elaborated." He then makes the following points in support of the validity of the statute: (a) The act does not apply to all industry but only to such labor relations as are directly involved in interstate commerce and in which labor disputes would burden that commerce. (b) The act merely safeguards rights of workmen which have already been held to be

[7] 301 U.S. 1, 1937.

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subject to legal protection. (c) The act may properly be applied to an employer engaged in production under the conditions here existing. The relation of the company's activities to the "stream of commerce" is clear and direct, whereas in the Schechter[8] and Carter[9] cases it was indirect and remote. (d) Unfair labor practices in the company's business would directly obstruct interstate commerce. Strikes would have results on that commerce which would be "immediate and catastrophic." (e) Finally, the act does not deny due process of law, nor does it violate the jury trial provision of the Seventh Amendment. Mr. Justice McReynolds wrote a dissenting opinion declaring "any effect on interstate commerce by the discharge of employees shown here would be indirect and remote in the highest degree." Furthermore, the statute interferes with the freedom of contract of employers and employees to a degree which denies due process of law.

In National Labor Relations Board v. Fruehauf Trailer Co.,[10] the same result was reached by the same majority of the Court. The company had discharged some of its men because of labor union activities and had been ordered to reinstate them. The trailer company manufactures trailers which are shipped to all parts of the country. The Court sustained the conclusions of the Board that the manufacturing and assembling operations which went on at the company's Detroit plant "are essentially connected with and dependent on the purchase, sales, and distribution operations without the state of Michigan." They are, therefore, within the reach of the act.

In National Labor Relations Board v. Friedman-Harry Marks Clothing Co.,[11] the same issues were presented. The company is engaged in manufacturing men's clothing, and is a relatively small establishment. Since its raw materials are shipped in through interstate commerce and its finished products distributed all over the country, it falls within the scope of the act.

In Associated Press v. National Labor Relations Board,[12] a new line of attack was invoked by the appellant. The Associated Press discharged one of its news editors because of his activities in organizing and furthering the American Newspaper Guild, and the Board ordered his reinstatement. Here again the Court divided five-to-four, and Mr. Justice Roberts wrote the majority opinion. There was no difficulty in agreeing that the Associated Press is engaged in interstate commerce and that the work of the editor in question was directly connected with that commerce. It was urged upon the Court, however, that the Board's order amounted to an

[8] 295 U.S. 495.

[9] Carter v. Carter Coal Co., 298 U.S. 238, 1936. For comment, see this REVIEW, Vol. 31, p. 259.

[10] 301 U.S. 49, 1937. [11] 301 U.S. 58, 1937. [12] 301 U. S. 103, 1937.

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invasion of the freedom of the press, and therefore violated the First Amendment. The Associated Press must have an unrestricted right to discharge its editorial writers in order to make possible the free and unbiased treatment of the news. Without such right of discharge, it cannot protect itself from the partiality and bias of its editorial employees. "Any regulation protective of union activities or the right collectively to bargain on the part of such employees is necessarily an invalid invasion of the freedom of the press." The majority opinion rejects this contention. The act does not compel the Associated Press to employ anyone. It does not require it to continue to employ an incompetent editor. It is at liberty to discharge this particular editor, or any other, for any other reason than his relationship to a labor organization. The Associated Press is not free from legal regulation because it is an agency of the press. The provisions of the act in no way infringe that freedom.

In an interesting dissenting opinion, Mr. Justice Sutherland urges that freedom of the press is abridged by the application of the statute in this particular case. He draws an interesting distinction between the restrictions upon federal power set forth in the First Amendment and the more generally stated limitations embodied in the due process clause of the Fifth Amendment. "The difference between the two amendments is an emphatic one and readily apparent. Deprivation of a liberty not embraced by the First Amendment, as, for example, the liberty of contract, is qualified by the phrase 'without due process of law'; but those liberties enumerated in the First Amendment are guaranteed without qualification, the object and effect of which is to put them in a category apart and make them incapable of abridgment by any process of law."

The last of the five cases is Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board.[13] Here again employees had been discharged for labor union activities and their reinstatement had been ordered. There was no dispute as to the fact that the coach company was engaged in interstate commerce or that the employees involved were doing work connected with that interstate commerce. The application of the act was accordingly upheld by a unanimous Court.

It will readily be seen that these cases push federal power farther into the field of manufacturing and production than any previous decisions have done. It is important to note, however, that in none of them does the Court generalize beyond the facts of the case. There is no broad holding that all labor relations in industries producing goods for the interstate market are to be regarded as directly connected with interstate commerce. On the contrary, in each case there is most careful analysis of the scope and organization of the business carried on, the closeness of its connection with interstate commerce, and an appraisal of the results upon

[13] 301 U.S. 142, 1937.

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that commerce which would ensue from strikes or labor disturbances in the particular employments involved. In other words, the Labor Relations Act is valid in these five cases, but may not be valid in its application to the next five cases. We have a federal statute regulating interstate commerce the validity of which and the applicability of which to concrete situations must depend upon a judicial finding in each case that there is a close relationship between the particular employment involved and the stream of interstate commerce.

(3) *The Ashurst-Sumners Convict-Made Goods Act.* In 1934, the Hawes-Cooper Act went into effect providing that convict-made goods transported into any state should be subject upon arrival therein, whether in original packages or otherwise, to the operation of state laws as if produced in the state. This act, modelled upon the Wilson Act of 1890, was upheld in Whitfield v. Ohio.[14] In 1935, this was strengthened by the passage of the Ashurst-Sumners Act, patterned after the Webb-Kenyon Act of 1913. This act made it unlawful knowingly to transport in interstate or foreign commerce goods made by convict labor into any state where the goods are intended to be received, possessed, sold, or used in violation of its laws. Furthermore, convict-made goods must be plainly labelled as such. In Kentucky Whip and Collar Company v. Illinois Central R. R. Co.,[15] a unanimous court, speaking through Chief Justice Hughes, upheld the statute. He points out that the power of Congress over interstate commerce may be used for police purposes and may extend to punishing the use of such commerce as an agency to promote "immorality, dishonesty, or the spread of any evil or harm to the people of other states from the state of origin." Such evil may proceed from the inherent nature of the goods transported, as in the case of diseased or noxious articles, impure food and drugs, etc., or it may lie in the purpose of the transportation, as in the case of lottery tickets or the transportation of women for immoral purposes. In setting up these prohibitions, Congress may give effect to its own policies with regard to the instrumentalities of interstate commerce as in the case of commodities owned by interstate carriers. But Congress may also use this power as a means of protecting the states and furthering their policies in cases where unrestricted freedom of interstate commerce would result in the frustration of valid state laws. Congress may, in short, use its power to regulate interstate commerce in such a way as to prevent that commerce from being used to impede the carrying out of state policy. The Chief Justice states that there is no conflict between this ruling and the doctrine of Hammer v. Dagenhart,[16] inasmuch as the federal child labor act "had as its aim placing local production under federal control."

[14] 297 U.S. 431, 1936. For comment, see this REVIEW, Vol. 31, p. 262.
[15] 299 U.S. 334, 1937. [16] 247 U.S. 251, 1918.

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The case raises, however, some interesting questions. There can hardly be any difference between the legal status of goods made by convict labor and goods made by child labor. A statute, therefore (and one is now pending in Congress), which forbade the transportation of child-made goods into states the laws of which forbade their production or sale, would appear to be fully covered by the decision in the present case. In the case, however, upholding the validity of the Webb-Kenyon Act,[17] it was emphasized that Congress was excluding from interstate commerce goods shipped in violation of state law, but that these goods (intoxicating liquor) could be directly excluded from interstate commerce by Congress itself. Under the theory of Hammer v. Dagenhart,[18] it seems clear that Congress may not exclude from interstate commerce goods made by children or, we may assume, goods made by convicts. This leaves us the anomalous theory that Congress may bar goods from interstate commerce when their transportation is objectionable to the states, but may not bar the same goods merely because their transportation is objectionable for the same reasons to Congress.[19]

II. TAXING POWER

(1) *Social Security Act Cases.* The Social Security Act of 1935 is an elaborate statute comprising eleven titles. Its essential provisions are as follows: (a) It lays taxes on employers and employees to finance a federally administered system of old age benefits. (b) It imposes another tax on employers to secure funds for unemployment compensation. Such unemployment compensation is to be administered under state laws which must comply with set standards. Such taxes as are imposed upon employers under these state laws may be credited against the federal tax up to ninety per cent of the amount of the latter. Substantial grants are made to the states to encourage them to enact such unemployment compensation statutes. (c) Substantial appropriations to the states are made for old age assistance. This money is available when the state laws for administering the aid conform to standards specified in the act. (d) Additional grants are made to the states for the aid of dependent children, for maternal and child welfare, for the support of public health work, and for the aid of the blind. (e) A Social Security Board is created to adminis-

[17] Clark Distilling Co. v. Western Maryland Ry. Co., 242 U.S. 311, 1917.

[18] *Supra*, note 16.

[19] In State Board of Equalization v. Young's Market Co., 299 U.S. 59, 1936, it is held that California could validly exact a state license fee for the privilege of importing beer. This is authorized by the Twenty-first Amendment, which specifically forbids the importation of liquor into states in violation of their laws. It is not, therefore, invalid under the commerce clause. There is no denial of equal protection in singling out this commodity for license, since the same classification occurs in the Twenty-first Amendment.

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ter the law, one of its major responsibilities being to determine whether state legislation conforms to the federal standards set up.

The validity of the unemployment compensation section of the Social Security Act was attacked in the case of Charles C. Steward Machine Company v. Davis,[20] a case in which Davis, a stockholder of the company, sought to enjoin payment by the company of the statutory tax for the purpose of unemployment compensation. These provisions of the act were upheld in a five-to-four decision in which Mr. Justice Cardozo wrote the opinion for the majority. The opinion may be summarized as follows: (a) The tax on employers is an excise tax, and the argument is rejected that employment is a right beyond the reach of the taxing power. Not only is it an excise, but it is an excise uniformly laid, since the uniformity required of excise taxes is geographic and not intrinsic. (b) The exemptions provided for in the statute do not violate the due process clause. The tax is not imposed upon employers having less than eight employees, nor upon those who employ agricultural labor or domestic servants. These classifications are reasonable and relevant to the purpose of the act. (c) The statute does not involve federal coercion of the states in such a way as to invade their reserve powers and violate the Tenth Amendment. It will be recalled that in the A.A.A. case[21] the opposite conclusion had been reached, on the technical ground that the regulatory power of Congress over agriculture was supported by what the majority regarded as coercive crop reduction benefit contracts. The states here are not obligated to take advantage of the provisions of the act. They profit if they do so; they forego substantial benefits if they do not. But the Court finds no evidence of contract or coercion. (d) Finally, the states do not surrender, under this act, any powers which are essential to sovereignty. It is true that the money which they collect for purposes of the act is deposited in the federal treasury and may be used only for the purposes of unemployment compensation. This, however, is due to the states' own decision to conform to the policy of the statute, and any state is at liberty at any time to withdraw from the scheme.

In a dissenting opinion, Mr. Justice McReynolds insists that the act unduly interferes with the orderly government of the states by their own people. This is accomplished through "offers of seductive favors." This is, of course, the essential doctrine of the majority in the A.A.A. decision. Mr. Justice Sutherland writes a separate dissenting opinion in which he objects to the single feature of the act which in his judgment requires the states to surrender to the federal government power over the administration of their own laws. This, he feels, violates the Tenth Amendment.

[20] 301 U.S. 548, 1937.

[21] United States v. Butler, 297 U.S. 1; 1936. For comment, see this REVIEW, Vol. 31, p. 254.

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Mr. Justice Butler dissents on the much broader ground that the promotion of social security is not a purpose for which federal power may be exercised. "The Constitution grants to the United States no power to pay unemployed persons or to require the states to enact laws or to raise or disburse money for that purpose." Furthermore, "the tax and credit" device employed in the statute amounts to coercive action which violates the Tenth Amendment.

Helvering v. Davis[22] involved the validity of the old age pension provisions of the Social Security Act. Here an income tax was laid on employees and an excise tax upon employers measured by the wages paid during the year. From the funds thus raised, old age pensions are to be paid to persons who have reached the age of sixty-five. Mr. Justice Cardozo again spoke for the Court, which upheld these sections of the act. The major point of attack was, of course, the propriety of federal expenditures for the purpose of old age security. The opinion points out that in the A.A.A. case the Court had held that Congress may validly appropriate money for the general welfare. It is necessary, however, to distinguish "between one welfare and another," between a particular welfare and the general welfare. This decision, however, lies within the discretion of Congress "unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment." This is now familiar law. "When such a contention comes here we naturally require a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress." Under this theory, the Court finds no difficulty in including old age security within the general welfare which Congress may promote by the spending of money. If the purpose of the levy is constitutional, the tax itself is not open to attack. It is a valid excise and the exemptions, similar to those in the unemployment compensation sections, are not arbitrary and do not deny due process of law. Justices McReynolds and Butler dissent, but content themselves with the bare statement that the act violates the Tenth Amendment.[23]

(2) *Other Cases on the Federal Taxing Power.* The revenue act of 1934 imposed a tax on the domestic processing of cocoanut oil and provided that taxes collected on cocoanut oil coming from the Philippine Islands should be put into a separate fund and paid to the treasury of the Philippine Islands. The validity of this tax and the use made of its proceeds

[22] 301 U.S. 619, 1937.

[23] The Alabama Unemployment Compensation Act, passed conformably to the criteria set up in the Social Security Act, was held valid in Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 1937. This case is discussed *infra* at page 306. In Chamberlain v. Andrews, 299 U.S. 515, 1936, the New York Unemployment Insurance Act was upheld by an evenly divided Court, no opinion being written.

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were attacked by certain manufacturers using cocoanut oil in the production of soap in the case of Cincinnati Soap Co. v. United States.[24] The statute was upheld by a unanimous decision. The opinion of the Court, written by Mr. Justice Sutherland, may be summarized as follows: The processing tax is a valid exercise of the federal taxing power and is not a regulation of the processing itself. It does not invade any powers reserved by the Tenth Amendment, since the powers and the interests of the states of the Union are not involved. There is no denial of due process of law. The tax is not rendered invalid because its proceeds are devoted to a specific purpose as long as the purpose is one for which an appropriation may validly be made from the funds of the treasury. The propriety of giving the proceeds of this tax to the Philippine government is supported on the ground that Congress may validly tax "to pay the debts . . . of the United States." When the United States acquired the Philippines, this government assumed certain obligations with respect to their protection and the furtherance of their interests. This obligation may require the expenditure of money and hence come within the term "debts" as used in the taxing clause. There have been many instances in which Congress has made appropriations for the benefit of the Philippines. The fact that the federal government could not levy a tax for the specific purpose of paying the debts of a state does not mean that it cannot do this for a territory. Congress may do for one of its dependencies whatever a state might do for one of its own subdivisions. There is no invalid delegation of power in paying the money into the Philippine treasury, since Congress may delegate to territorial governments as much power as may be necessary.

Brush v. Commissioner of Internal Revenue[25] raised the question whether the salary of the chief engineer of the Bureau of Water Supply of New York City is subject to federal income taxation. In an opinion written by Mr. Justice Sutherland, the Court holds that it is not. The water system of the city is created and conducted in the exercise of the city's governmental functions. This puts it outside the reach of the rule in South Carolina v. United States[26] and Ohio v. Helvering[27] in which the Court had held that proprietary or business functions carried on by a state or municipality are not free from federal taxation. Since the petitioner in this case is thus engaged in a governmental activity, his salary is protected from federal taxation under the doctrine of Collector v. Day.[28] Mr. Justice Roberts, with whom Mr. Justice Brandeis concurred, dissented strongly on the ground that the majority opinion extends the doctrine of immunity from intergovernmental taxation dangerously far.

[24] 301 U.S. 308, 1937. [25] 300 U.S. 352, 1937. [26] 199 U.S. 437, 1905.
[27] 292 U.S. 360, 1934. For comment, see this REVIEW, Vol. 29, p. 36.
[28] 11 Wall. 113, 1871.

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"It seems to me that the reciprocal rights and immunities of the national and state governments may be safeguarded by the observance of two limitations upon their respective powers of taxation. These are that the exactions of the one must not discriminate against the means and instrumentalities of the other and must not directly burden the operations of the other. . . . Such exemption from taxation ought to be strictly limited. They are essentially unfair. They are unsound because federal or state business ought to bear its proportionate share of taxation in order that comparison may be made between public and private business."

The National Firearms Act of 1934 imposes a $200 annual license tax on dealers in machine-guns, silencers, sawed-off shotguns, and rifles, etc., and lays further taxes upon the individual sales or tranfers of such firearms. In Sonzinsky v. United States,[29] the license tax provision is upheld under the doctrine of the Oleomargarine Tax Case.[30] It is "on its face" only a revenue measure. It produces some revenue, and the Court may not inquire into the motives which led Congress to pass it. It differs from the child labor tax held void in Bailey v. Drexel Furniture Co.[31] in that it does not contain "regulatory provisions related to a purported tax in such a way as has enabled this Court to say . . . that the latter is a penalty resorted to as a means of enforcing the regulations." Nor is the subject of the tax treated as criminal in the present act, as was the case in the tax held bad in United States v. Constantine.[32] "Every tax is in some measure regulatory . . . But it is not any the less a tax because it has a regulatory effect." The decision was unanimous, and the opinion was written by Mr. Justice Stone.

III. JUDICIAL POWER—DECLARATORY JUDGMENTS

In Aetna Life Insurance Company v. Haworth,[33] the plaintiff tried to secure in a federal district court a declaratory judgment which would determine the rights and obligations embodied in certain life insurance policies that had become a matter of dispute. The issue was as to the fact of the total disability of the insured and his consequent claim to benefits under the policies, together with related questions of a similar kind. In a unanimous opinion by Chief Justice Hughes, the Court held that this is a proper case in which to seek a declaratory judgment. The controversy is one which is appropriate for judicial determination, a test which the Court defines in the following terms: "It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character as distinguished from an opinion advising what the law would be upon a hypothetical state of facts."

[29] 300 U.S. 506, 1937. [30] McCray v. United States, 195 U.S. 27, 1904.
[31] 529 U.S. 20, 1922.
[32] 296 U.S. 287, 1935. For comment, see this REVIEW, Vol. 31, p. 263.
[33] 300 U.S. 227, 1937.

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IV. CURRENCY POWER—ANOTHER GOLD CLAUSE CASE

The general validity of the Gold Clause Resolution of June 5, 1933, and its applicability to contracts between private individuals was reaffirmed in Holyoke Water Power Co. v. American Writing Paper Co.[34] Here the water company had executed certain leases to the paper company for water power in consideration of an annual rental of "a quantity of gold which shall be equal in amount to $1,500 of the gold coin of the United States of the standard weight and fineness of the year 1894, or the equivalent of this commodity in United States currency." The paper company became insolvent, and in the course of bankruptcy proceedings the water company intervened and asked the Court to determine the amount of money due to it under the leases. It claimed that these leases were exempt from the abrogating effect of the Gold Clause Resolution, since the contract in question was not for the payment of a debt but for the sale of a commodity, "or if viewed as a covenant for payment, that the standard was the commodity value of the bullion, not the value of the coin as money." In a five-to-four decision, the Court, speaking through Mr. Justice Cardozo, rejected these contentions. The contract was for the payment of money and not for the sale of a commodity. The lessor produces water power, and wants in return for it, not gold, but currency or bullion which can be exchanged for currency. The contract accordingly falls within the spirit and the letter of the gold clause resolution. The Court rejects the argument that "covenants of this particular form are so rare and exceptional that the protection of the monetary system does not require their suppression, and that arbitrary suppression is inconsistent with the Fifth Amendment." Justices Van Devanter, McReynolds, Sutherland, and Butler dissent without opinion.

V. DELEGATION OF LEGISLATIVE POWER—RATIFICATION BY CONGRESS—SHIPPING BOARD CASES

In two cases involving the status and powers of the United States Shipping Board Bureau in the Department of Commerce, the Court managed to side-step some extremely important constitutional questions. These cases were: Isbrandtsen-Moller Company v. United States[35] and Swayne and Hoyt v. United States.[36] In the first of these, the Secretary of Commerce had ordered the shipping company to file a copy of its books and records for a certain period of time in order to provide a basis for proper administration of the regulatory provisions of the Shipping Act of 1916. The company sought an injunction to restrain the enforcement of this order, alleging, first, that the order itself constituted an illegal search and seizure and a denial of due process of law, and, second, that the Secretary of Commerce was without power to issue the order,

[34] 300 U.S. 324, 1937. [35] 300 U.S. 139, 1937. [36] 300 U.S. 297, 1937.

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since that power had been unconstitutionally transferred from the Shipping Board to the Department of Commerce.

A minimum of regulatory power over foreign shipping had been given to the United States Shipping Board when it was created in 1916. In 1932, Congress passed the so-called Economy Act, which authorized the President to "transfer the whole or any part of any independent executive agency and/or the functions thereof, to the jurisdiction and control of an executive department or another independent executive agency." These transfers were to be made by Executive Orders which were subject to disallowance by Congress within sixty days. On March 3, 1933, the act of 1932 was amended to include within the term "executive agency" any "commission, independent establishment, board, bureau, division, service, or office in the executive branch of the government." Acting under authority of this act, President Roosevelt, in June, 1933, transferred the functions of the United States Shipping Board to the Department of Commerce and abolished the Board. Later on, Congress appears to have ratified this transfer by making appropriations for the work of the Shipping Board Bureau in the Department of Commerce. When the Merchant Marine Act of 1936 was passed, it referred to the functions of the former Shipping Board as "now vested in the Department of Commerce pursuant to Section 12 of the President's Executive Order No. 6166."

In a unanimous decision, the Court, speaking through Mr. Justice Roberts, upheld the validity of the Secretary's order. It found no denial of due process of law and held that an order seeking information upon which rate regulation might be based did not amount to an unreasonable search and seizure. It refused to pass upon the question whether the Economy Act of 1932 invalidly delegated legislative power to the President, because even if illegal delegations had been made, they had been ratified by the subsequent acts of Congress. The same result was reached in the Swayne and Hoyt case, and for similar reasons. In that case, the Court referred to the Shipping Board as an agency similar to the Interstate Commerce Commission, and described it as "an administrative agency to whose informed judgment and discretion Congress has committed the determination of questions of fact, on the basis of which it is authorized to make administrative orders." It held that the determinations made by the Board would not be set aside by the courts if there is evidence to support them and concluded that such evidence had been spread upon the record. By this disposition of these cases, the Court avoided the necessity of throwing light upon the very confused problem as to the constitutional status of the independent regulatory commissions, their relations to Congress, and the kind of power which the President, either with or without statutory sanction, may exercise over them.

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VI. INTERNATIONAL AFFAIRS—DELEGATION OF POWER—NEUTRALITY

In May, 1934, Congress passed a joint resolution providing that if the President finds that an embargo on the sale of arms and munitions in the United States to countries now at war in the Chaco would promote peace, he may, after consultation with other American Republics, and with their coöperation, establish such an embargo by proclamation. Violation of this proclamation was made punishable by heavy fine and imprisonment. President Roosevelt issued such a proclamation. In United States v. Curtiss-Wright Export Corporation,[37] the appellees had been convicted of violation of the proclamation. The President later revoked the proclamation. Constitutional attack centered on the point that the resolution had delegated virtually unfettered legislative power to the President to set up the embargo, to determine its conditions, and to revoke it. In a valuable opinion by Mr. Justice Sutherland, the Court upholds the resolution and the President's action. If the resolution had related solely to internal affairs, the delegation of legislative power might have been invalid. But in the field of international affairs the powers of the federal government are not limited by the doctrine of enumeration, or by the separation of powers; they are the powers of a sovereign nation. The President, furthermore, is the spokesman of the nation in its dealings with other Powers, and he enjoys as such a range of discretion which could not validly be conferred upon him by domestic legislation. Powers similar to those exercised here have been delegated to the President by numerous congressional acts over a period of one hundred and fifty years. This long-established practice creates a strong presumption of validity. The delegations of power are accordingly constitutional, and the proclamation itself was accompanied by appropriate recital of essential jurisdictional facts.

VII. FEDERAL BILL OF RIGHTS

(1) *Jury Trial.* The Sixth Amendment guarantees a jury trial in all criminal prosecutions. It has long been held, however, that this requirement does not extend to numerous offences which may be described as "petty." Just what offences fall within this classification must, of course, be determined in specific cases. In District of Columbia v. Clawans,[38] the defendant was convicted of dealing in second-hand personal property without a license. She was denied jury trial, and was sentenced to pay $300 or spend sixty days in jail. The Supreme Court held that her offence was petty, and that the denial of jury trial was accordingly not a violation of the Sixth Amendment. Justices McReynolds and Butler dissent on the ground that the severity of the penalties imposed bring the offence within the protection of the amendment.

[37] 299 U.S. 304, 1936. [38] 300 U.S. 617, 1937.

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In a case decided in 1909, the Supreme Court, invoking a common law rule, had held that an employee of the government cannot sit as a juror on the trial of a criminal case instituted by the government. An act of 1935 makes employees of the government eligible for jury service in the District of Columbia. In United States v. Wood, [39] this statute is attacked on the ground that it violates the Sixth Amendment, which guarantees trial by an impartial jury. The statute was upheld by a unanimous Court There is no ground for assuming that government employees are so inescapably biased as to be disqualified as a class from jury service. The statute permits the discovery of actual bias in the case of an individual juror. The law does not, therefore, impair the right of trial by an impartial jury.

(2) *Due Process of Law.* In 1935, Congress passed a new Farm Bankruptcy Act to replace the one unanimously held invalid in Louisville Joint Stock Bank Company v. Radford.[40] This new statute was upheld by a unanimous Court in Wright v. Mountain Trust Bank.[41] The opinion is written by Mr. Justice Brandeis. The original act had been held to deny due process of law because it took away five important substantive rights of creditors. These were (a) the right to retain a lien on the property until the debt is paid, (b) the right to realize on the security by a judicial public sale, (c) the right to determine the time of such sale, subject to the court's discretion, (d) the right to bid at the sale and thus guarantee that the property is devoted primarily to the satisfaction of the debt, either through the proceeds of the sale or by the taking of the property itself, and (e) the right to control the property as long as the debt is unpaid, subject only to the court's discretion, and to have the rents and profits applied to the satisfaction of the debt. The new statute adequately protects the first, second, and fourth of these rights. The chief attack is directed against the alleged denial of the third, the right of the creditor to determine when the sale shall be held. It is urged that the statute gives an absolute right to a three-year stay for the protection of the debtor. The Court finds, however, that the statute may be interpreted to permit the Court to order an earlier sale of the property in its discretion. So construed, the act does not seriously impair the creditors' right.

It was further urged that the new act was invalid because it deprived the creditor of control of the property during the period of default and the right to have the rent and profits collected to satisfy the debt. The Court replied that it might be advantageous to the creditor to allow the farmer to run the farm during the period of the debt rather than to have it operated by a trustee. Thus the creditor's interest is not

[39] 299 U.S. 123, 1936.
[40] 295 U.S. 555, 1935. For comment, see this REVIEW, Vol. 30, p. 76.
[41] 300 U.S. 440, 1937.

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sacrificed. Nor does the creditor suffer by the provision which requires that the rent shall first be paid to the court, which shall first pay taxes and provide for upkeep before distributing the remainder among the creditors. Payments for taxes and upkeep are necessary to preserve the title and the property. These payments would be made under normal foreclosure proceedings if the property were in the hands of a receiver. Speaking more generally, the Court points out that the statute does not have to meet the same test that would be applied to state action under the state police power alleged to violate the contract clause. The discretion of the state and its authority to modify the rights of creditors are more closely restricted by the contract clause than is the power of the federal government to which the contract clause does not apply. Congress is specifically given the broad power "to establish . . . uniform laws on the subject of bankruptcy throughout the United States," subject only to the limitation that it must not alter the rights of creditors in so arbitrary a fashion as to deny due process of law. The present statute makes no unreasonable modifications of creditors' rights, and hence is valid.[42]

In Anniston Manufacturing Company v. Davis,[43] the Supreme Court held valid the machinery provided for refunding the processing taxes unconstitutionally collected under the A.A.A. After the decision in the Butler case, those who had paid these taxes were obliged to sue the collector of internal revenue in order to get them back. In 1936, Congress established a special arrangement to meet the situation. Taxes which had been paid on floor stocks could be recovered by making demand on the Commissioner of Internal Revenue and, upon his refusal to refund, by bringing suit in the Court of Claims or in a federal district court. The procedure for refunding the processing taxes was more elaborate. Demand for them had to be made within three months. A special board of review, somewhat similar to the Board of Tax Appeals, was set up in the Treasury to pass upon the claims. Hearings were conducted in individual cases by officers designated by this board from its own members or from the officials in the Treasury, and the board made a final decision upon the findings of fact presented to it by these officers. The decisions of the board were made subject to full judicial review in the Circuit Court of Appeals. The statute provided that the refunds should be made only when the claimant could show that the tax which he had paid had not been shifted. This whole arrangement was held to accord adequate protection to the rights of claimants for tax refunds. The procedure itself is fair. It permits the adequate presentation of all relevant facts, and it guarantees judicial

[42] In two other cases, provisions of the Bankruptcy Act were upheld against attacks under the due process clause. Both involved minor points. See Kuehner v. Irving Trust Co., 299 U.S. 445, 1937; *In re* 620 Church Street Building Corporation, 299 U.S. 24, 1936. [43] 301 U.S. 337, 1937.

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review of all questions of law. There is no arbitrary denial of right in requiring a claimant for tax refund to show that he has himself borne the loss resulting from the tax payment instead of passing on that loss to other persons. The act does not bar recovery in all cases where it is impossible to make this showing. The Court so construes it as to permit the board to award refunds in cases where the tax was not shifted but where it was not possible to show this.

In United States v. Hudson,[44] the respondent had bought and later sold future contracts for five hundred thousand ounces of silver, and had made a profit on the transaction of $8,000. This occurred in May, 1934. In June, 1934, Congress passed the Silver Purchase Act, which imposed a tax of fifty per cent on profits made by transfers of silver bullion. It made the tax applicable to transactions which had taken place within thirty-five days before the act went into effect. The Court held that the act does not deny due process of law. The tax amounts to a special income tax, and it is permissible to make it retroactive for the limited period involved.

A section of the Clayton Anti-Trust Act prescribes heavier punishment for certain offences involving the rights and property of the United States than for like offences involving the rights and property of private persons. It does this by restricting the penalty for contempt of court arising under the act except in suits brought by the government. This discrimination is not so arbitrary as to deny due process of law. This is the case of Hill v. United States ex rel. Weiner.[45]

Public Resolution No. 53 of June 27, 1934, provides that so long as Germany is in arrears with respect to the payment of war claims of American nationals against that country, all deliveries of property authorized to be made under the Trading with the Enemy Act of 1917 or the Settlement of War Claims Act of 1928 shall be postponed. The German property thus sequestered shall be held subject to the discretionary power of the President to remove such restrictions in individual cases. In Cummings v. Deutscher Bank,[46] the validity of this resolution is upheld. The United States has not completely withdrawn its consent to be sued, but has merely postponed deliveries of property authorized by suits until the German debts are paid. This does not deprive claimants of property without due process of law.

[44] 299 U.S. 498, 1937. [45] 300 U.S. 105, 1937. [46] 300 U.S. 115, 1937.

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B. QUESTIONS OF STATE POWER

I. THE FOURTEENTH AMENDMENT

1. *Privileges and Immunities Clause*

The case of Colgate v. Harvey[47] involves a striking change in the judicial interpretation of the privileges and immunities clause of the Fourteenth Amendment. It accordingly merits close analysis. The case involved the validity of the income tax act of the state of Vermont, the details of which need not be set forth here. Three provisions of the act were drawn in question: (a) Taxes were imposed upon dividends earned outside the state, while dividends earned in the state were exempt. (b) Income from money loaned inside the state was exempt, while income from loans outside the state was taxable. (c) An exemption of $800 was allowed to a married person whose total income is derived from interest-bearing securities alone, while the exemption is not allowed if the income is supplemented from other sources. All three of these provisions were alleged to deny the equal protection of the laws and also to abridge privileges and immunities of citizens of the United States. In a six-to-three decision, the Supreme Court held invalid the second of the three. The first and third were held to involve reasonable classifications which do not deny equal protection of the laws.

Mr. Justice Sutherland, speaking for the majority, held that the exemption from tax of money loaned in the state, coupled with the taxing of that loaned outside, rested upon an arbitrary classification. The place of the loan is no more relevant to the propriety of the tax than would be the time of the loan. The exemption therefore denies equal protection of the laws. The opinion might have stopped at this point. But the point of attack is shifted to the privileges and immunities clause of the Fourteenth Amendment, and Mr. Justice Sutherland launches into an elaborate analysis of that provision and its applicability to the present case. It has from the beginning been recognized that the privileges and immunities of United States citizenship differ from those of state citizenship, but the Court has never attempted any comprehensive tabulation of just what they are. Even before the Fourteenth Amendment, the Supreme Court had held, in Crandall v. Nevada,[48] that the freedom to pass from one state to another is a privilege which results from the essential character of national citizenship, and is, therefore, one of the privileges and immunities of that citizenship. This leads Mr. Justice Sutherland, without further argument, to declare: "The right of a citizen of the United States to engage in business, to transact any lawful business, or to make a lawful

[47] 296 U.S. 404, 1935. This case was decided during the 1935 term of the Court. It was inadvertently omitted from the article reviewing the work of that term. Its importance justifies its inclusion here. [48] 6 Wall. 35, 1868.

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loan of money in any state other than that in which the citizen resides is a privilege equally attributable to his national citizenship. A state law prohibiting the exercise of any of these rights in another state would, therefore, be invalid under the Fourteenth Amendment.... It well cannot be doubted that a citizen of the United States, residing and having property in Vermont, exercises a privilege of national citizenship when he negotiates and takes out in another state a policy insuring that property or takes out in another state a policy insuring his life. . . . It follows from what has been said that when a citizen of the United States residing in Vermont goes to New Hampshire, he does not enter foreign territory, but passes from one field into another field of the same national domain. When he trades, buys or sells, contracts or negotiates across the state line, when he loans money, or takes out insurance in New Hampshire—whether in doing so he remains in Vermont or not—he exercises rights of national citizenship which the law of neither state can abridge without coming into conflict with the supreme authority of the federal constitution. . . . It reasonably is not open to doubt that the discriminatory tax here imposed abridges the privilege of a citizen of the United States to loan his money and make contracts with respect thereto in any part of the United States."

There is no pretense of supporting this startling doctrine by any direct authority. The nearest approach to it is a reference to the opinion in Allgeyer v. Louisiana,[49] "where the Court evidently thought that under circumstances not unlike those just suggested the words 'liberty' and 'privilege' were interchangeable terms." A glance at this case will indicate that Mr. Justice Peckham's opinion established the proposition that the right to carry on the insurance business across the state line is part of the liberty protected by the due process clause of the Fourteenth Amendment. In the course of his opinion, he quotes Mr. Justice Bradley, who had written a concurring opinion in Butchers Union S.H. and L.S.L. Company v. Crescent City L. S. and S. H. Company,[50] and had made the statement therein, "I hold that the liberty of pursuit—the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States." This had been the position taken by Bradley and his colleagues in their dissenting opinion in the Slaughterhouse Cases.[51] Conceding that it is not the law recognized by the Court, Bradley went on to say that even if the right to follow one of the ordinary callings of life is not a privilege of a citizen of the United States, it certainly is a right protected by due process of law. Mr. Justice Sutherland's authority for the present ruling seems to be a dissenting opinion read into a concurring opinion quoted in a case which holds that the right which he

[49] 165 U.S. 578, 1897. [50] 111 U.S. 746, 1884. [51] 16 Wall. 36, 1873.

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alleges to be a privilege or immunity of a citizen of the United States is in fact a part of the liberty protected by the due process clause.

Mr. Justice Stone, with whom Justices Brandeis and Cardozo concur, wrote a dissenting opinion emphasizing the revolutionary character of the majority doctrine and its essential unsoundness. Portions of this merit quotation. "Feeble indeed is an attack on a statute as denying equal protection which can gain any support from the almost forgotten privileges and immunities clause of the Fourteenth Amendment. The notion that that clause could have any application to any but the privileges and immunities peculiar to citizenship of the United States as distinguished from those of citizens of states, has long since been rejected. . . . Since the adoption of the Fourteenth Amendment, at least forty-four cases have been brought to this court in which state statutes have been assailed as infringements of the privileges and immunities clause. Until today none has held that state legislation infringed that clause. If its sweep were now to be broadened to include protection of every transaction across state lines, regardless of its connection with any relationship between the states and the national government, a step would be taken, the gravity of which might well give us concern. . . ."

The rule laid down in this case essentially reverses the major holding in the Slaughterhouse Cases, a holding adhered to for sixty-five years. If applied broadly, it may effect a revolutionary change in the direction of the nationalization of civil rights. It would place at once under the protection of the federal courts, in construing the privileges and immunities clause, a range of rights and privileges now left to state protection. How energetically the Court will follow up this step toward further judicial centralization will be awaited with great interest.

2. *Due Process of Law*

(a) *Due Process and the Police Power—The Minimum Wage Case.* The last chapter appears to have been written in the long and confused history of the constitutionality of minimum wage legislation. The Supreme Court has finally got itself on record, by a margin of five-to-four, as upholding the constitutionality of such a law.

In 1913, the state of Washington passed a minimum wage law applicable to women and minors in industry. This statute was upheld in two decisions in the supreme court of the state.[52] A similar statute was passed in Oregon, and the validity of this was upheld by the Supreme Court of the United States in the case of Stetler v. O'Hara[53] in 1917 by a vote of four-to-four, no opinion being written. In 1923, the Supreme Court, in the case of Adkins v. Children's Hospital,[54] held unconstitutional a mini-

[52] Larsen v. Rice, 100 Wash. 642, 1918; Spokane Hotel Co. v. Younger, 113 Wash. 359, 1920. [53] 243 U.S. 629, 1917. [54] 261 U.S. 525, 1923.

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mum wage law passed by Congress for the District of Columbia. This was a five-to-three decision. In 1925 and in 1927, the Court without opinion ruled that the Adkins case rendered invalid the state minimum wage laws of Arizona[55] and Arkansas,[56] respectively. In 1936, a New York minimum wage law went to the Supreme Court. It had been held void by the state Court of Appeals in a divided decision in which the majority held themselves bound by the rule of the Adkins case. The Supreme Court of the United States declined to reopen the issues settled in the Adkins case and invalidated the New York statute by a five-to-four decision in Morehead v. New York *ex rel.* Tipaldo.[57] During all this time, the Washington statute of 1913 had been in force; and a case involving its validity was on the Court's docket when the Tipaldo case was decided. Mr. Justice Roberts moved over to the other side of the controversy, and the Washington statute was accordingly upheld by a five-to-four decision in which the Adkins case was expressly over-ruled. This is the case of West Coast Hotel Co. v. Parrish.[58]

Chief Justice Hughes, who wrote the opinion for the majority, stated the reasons for reopening the case to be (a) the importance of the issue involved, (b) the closeness of the decisions in the earlier cases, (c) the changed economic conditions which had supervened. The Chief Justice then proceeds to present the arguments supporting minimum wage legislation affecting women and children as a reasonable exercise of the states' police power. The due process clause protects freedom of contract, and the right to make agreements with regard to wages is a part of that freedom of contract. This freedom of contract, however, is not absolute. It must yield to restrictions and regulations reasonably related to the public welfare. The protection of women and minors from the evils of starvation wages is an object related to the public welfare which may properly be promoted through the police power. It is proper to single out women and minors for special treatment because they so obviously need it. The act is not arbitrary as establishing minimum wages without any reference to the value of the service rendered by employees, since it carefully provides that the act shall be administered by an agency on which employers and employees are properly represented. The Court accordingly concludes that minimum wage legislation is a valid exercise of the police power and does not deny liberty or property without due process of law. "Our conclusion is that the case of Adkins v. Children's Hospital should be, and it is, overruled."

The dissenting opinion of Mr. Justice Sutherland is interesting, not

[55] Murphy v. Sardell, 269 U.S. 530, 1925. A memorandum opinion.

[56] Donham v. West-Nelson Co., 273 U.S. 657, 1927. A memorandum opinion.

[57] Morehead v. New York *ex rel.* Tipaldo, 298 U.S. 587, 1936. For comment, see this REVIEW, Vol. 31, p. 269. [58] 300 U.S. 379, 1937.

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merely because of the mid-Victorian doctrine as to social legislation, but because of its analysis of the doctrine of reasonable doubt in the judicial review of legislation. The opinion rejects the idea that a change in economic conditions can have any bearing upon the constitutional issue involved. "The meaning of the Constitution does not change with the ebb and flow of economic events." The statute here is the same as that in the Adkins case. In neither statute was there any guarantee that there be any reasonable relation between the wages paid and the value of the service rendered. And finally, women may not be singled out for special protection with regard to wages, because "certainly a suggestion that the bargaining ability of the average woman is not equal to that of the average man would lack substance. The ability to make a fair bargain, as everyone knows, does not depend upon sex."

A Wisconsin statute legalizing peaceful picketing is held to be a valid exercise of the state's police power in Senn v. Tile-Layers' Protective Union.[59] The statute authorized the giving of publicity to labor disputes and declares lawful peaceful picketing through advertising, speaking, or patrolling in any public street or place where any person or persons may lawfully be, without intimidation or coercion, or by any other methods not involving fraud, violence, breach of the peace, or threat thereof. It further provides that such picketing may not be enjoined. Senn was a tile-layer operating a small business with the aid of two or three helpers. He was ineligible to join the union in this craft because he did not meet the requirements of previous apprenticeship. He refused the union demand to become a union contractor and continued to employ non-union workmen. In a five-to-four decision, in which Mr. Justice Brandeis speaks for the majority, this statute is held not to violate the due process clause either by the authorizing of unlawful means or by the seeking of an unlawful end. The methods which may be employed in picketing are kept carefully within reasonable limits, and the object for which the picketing is resorted to is the lawful one of obtaining work for members of the tile-layers' union. Mr. Justice Butler, with Justices Van Devanter, McReynolds, and Sutherland, dissented. They urged that the statute deprives the individual of the right to engage in one of the common occupations of life and denies him equal opportunity with others under like circumstances. The object of the union is unlawful in that it violates the rule that "no man may be compelled to hold his life or the means of living at the mere will of others."

State police power is reasonably exercised in a South Carolina statute which requires manufacturers of fertilizer to put on each container a tag disclosing the amount in pounds per 100 pounds of each material used in the mixture. This is held to be neither unreasonable nor arbitrary. The

[59] 301 U.S. 468, 1937.

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objection that it requires manufacturers to disclose secret formulæ is met by the conclusion that such formulæ may be revealed if it is necessary to promote fair dealing. This is the case of National Fertilizer Association v. Bradley.[60]

A Texas statute aimed at the conservation of the state's natural gas supply was invalidated in Thompson v. Consolidated Gas Utilities Incorporated.[61] The statute forbade the production of natural gas in such a manner as to result in waste and declared that the production of natural gas in excess of transportation or market facilities or reasonable market demand constituted such waste. The act set up a commission to prorate and regulate the production of gas for the protection of public and private interests. The commission issued an order applicable to gas producers owning private pipe lines, which restricted the amount of gas that they might bring to market to an amount below their market requirements under existing contracts. This compelled them to purchase gas from well-owners who otherwise, for want of a market or market facilities, would be prohibited from producing. In a unanimous decision, this order is held unconstitutional. The producers against whom it has been directed have not been guilty of waste, nor do the orders prevent waste. The effect of the order is to take from the owners of private pipe lines the normal advantages resulting from the ownership and use of those lines, and it does this without compensation. Mr. Justice Brandeis, speaking for the Court, concludes: "Our law reports bear no more glaring instance of the taking of one man's property and giving it to another . . . and this court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid."

Another Texas conservation statute is upheld in Henderson Company v. Thompson.[62] This act prohibited the use of "sweet" natural gas in the manufacture of carbon black, while permitting the use for that purpose of "sour" natural gas. Sour gas is defined as that which contains more than a specified amount of hydrogen sulphide or, more generally, a gas which in its natural state is unfit for domestic use for light or fuel. Sweet gas is gas which is not sour. The purpose of the act is to prevent the wasteful exploitation of the gas supply which is available for domestic consumption. This is held not to deny due process of law.

Hauge v. Chicago[63] upholds a municipal ordinance requiring, under penalty, that merchandise sold in load lots by weight and delivered by wagon within the city shall be weighed by a public weigh-master, who shall issue a certificate of weight to the purchaser. This is held to be applicable to one who brings in coal from a mine outside the city where it is

[60] 301 U.S. 178, 1937.
[61] 300 U.S. 55, 1937.
[62] 300 U.S. 258, 1937.
[63] 299 U.S. 387, 1937.

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weighed on state-tested scales, and who, in order to comply with the ordinance, must unload and reload, so that his vehicle may be weighed. This does not deny due process of law, nor does it unduly discriminate against him in favor of dealers whose coal-yards are within the city limits.

Old Dearborn Distributing Co. v. Seagram Distilling Corporation[64] upholds the validity of the Illinois Fair Trade Act. This statute allows the seller of a trade-marked commodity to make contracts with buyers which provide that the commodity shall not be resold except at a stipulated price. "Lawfully and knowingly" selling such a commodity below the price set by contract, whether or not the seller is a party to the contract, is declared to be unfair competition, and any person injured thereby may bring action for damages. In an opinion written by Mr. Justice Sutherland, this is held not to violate the due process clause. There is evidence to show that price-cutting is injurious to the good will and business of the producer. Such good will is property, and injury to it is a proper subject for legislation. The aim of the statute is to protect this property, namely, the good will of the producer, and the price restriction is a legitimate means to that legitimate end.

(b) *Due Process—Price Control—Valuation.* A Virginia statute of 1934 created a milk commission which was authorized (1) to establish within the state "natural market areas," (2) to fix maximum and minimum prices for milk and cream therein, (3) to require distributors to procure licenses in order to trade in these areas, (4) to impose fees to pay for the administration of the act. The statute declares that it does not apply to interstate or foreign commerce, except as the Constitution and laws of the United States permit. The Supreme Court, speaking through Mr. Justice Cardozo, held the act valid in Highland Farms Dairy v. Agnew.[65] The power of the state to fix the price of milk was upheld in Nebbia v. New York.[66] There is no unlawful delegation of legislative power. There is no federal restriction upon such delegation, and whether or not the state has improperly delegated such power is a matter of state and not federal law. The statute does not deny a republican form of government, and even if it did, it is for Congress to enforce that guaranty. There has been no denial of due process of law under the provision that prices established in an area may be cancelled on the request of a majority of the producers and distributors there. This may involve a delegation of power to private groups, but since the power has not been used, the controversy remains conjectural. Even if that section should be void, the rest of the act would remain. The act does not burden interstate commerce. Its provisions stipulate that interstate commerce shall not be affected, and in adminis-

[64] 299 U.S. 183, 1936. [65] 300 U.S. 608, 1937.

[66] 291 U.S. 502, 1934. For comment, see this REVIEW, Vol. 29, p. 45.

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tering it the Commission has observed this warning. The act is not invalid for failing to declare the standards to be applied in granting or refusing licenses. There is judicial review of the Commission's act with regard to licenses, and no one has yet complained of being refused a license. Justices Van Devanter, McReynolds, Sutherland, and Butler dissent from that part of the opinion which upholds the power of the state to fix milk prices. They refer to their views expressed in the dissenting opinion in the Nebbia case written by Mr. Justice McReynolds.

A Georgia statue of 1935 fixed maximum charges for handling and selling leaf tobacco in local warehouses. This was attacked in Townsend v. Yeomans[67] on the ground that it denies due process of law and interferes with interstate commerce. The Court upheld the act. There is no denial of due process, since the business of handling and selling tobacco is affected with a public interest, and since there is no showing that the rates which have been fixed are so low as to be confiscatory. While the Georgia legislature made no special investigation of the industry, there is nothing to indicate that it acted arbitrarily in setting up its rates. The act is not void under the commerce clause. It is unnecessary to decide whether the business involved is an interstate business. Congress has not legislated on the subject. It is not a subject with respect to which national uniform control is necessary, and therefore under the doctrine of Cooley v. The Board of Wardens[68] the state may exercise control.

In Ohio Bell Telephone Co. v. Public Utility Commission of Ohio,[69] the Supreme Court administered a stinging rebuke to the Commission for the procedure used in arriving at a valuation of the company's property upon the basis of which lower rates and large refunds to consumers had been ordered. In reaching its valuation figures, the Commission started with the value of the property in 1925. It then fixed a valuation for each succeeding year. In doing this, it took judicial notice of price trends due to the depression and modified its valuations in the light of such price changes. The evidence upon which these changes in value were based was not made part of the record, was not presented to the company for explanation or rebuttal, and, in fact, was not even disclosed on demand. In an opinion by Mr. Justice Cardozo, this is held to deny due process of law. A court or an administrative commission may properly take judicial notice of the fact that prices have declined during the depression. But it cannot take judicial notice of the amount of that decline. That must be established by evidence, and the evidence made subject to scrutiny in a public hearing. The right to such a hearing is one of "the rudiments of fair play" and is essential to due process.

(c) *Due Process and Fundamental Civil Liberties—Free Speech and Assembly.* An important case in the history of civil liberty in the United

[67] 301 U.S. 441, 1937. [68] 12 Howard 299, 1852. [69] 301 U.S. 292, 1937.

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States is De Jonge v. Oregon,[70] which extends the protection of the due process clause to freedom of assembly. The Oregon Criminal Syndicalism Act defines criminal syndicalism as "the doctrine which advocates crime, physical violence, sabotage, or any unlawful acts or methods as a means of accomplishing or effecting industrial or political change or revolution." It goes on to punish various acts for the promotion of criminal syndicalism, including "presiding at or assisting in conducting a meeting of such an organization, society, or group." According to evidence which was not disputed, De Jonge was a member of the Communist party, which does advocate criminal syndicalism. He spoke at a meeting in Portland called by the party but largely attended by non-members. In his speech, he did not advocate criminal syndicalism but dealt rather with the maritime strike then going on. He was arrested, convicted under the act, and sentenced to seven years in prison. Speaking through Chief Justice Hughes, the Court held that he had been deprived of his liberty without due process of law. Under the interpretation which had been given to the Oregon statute, no meeting of the Communist party could be held which would be lawful, even a meeting to discuss the tariff, foreign policy, or any equally innocent topic. This amounts to an arbitrary infringement of the right of freedom of assembly. Freedom of speech has repeatedly been held to be included in the "liberty" which is protected against state infringement by the due process clause of the Fourteenth Amendment. "The right of peaceable assembly is a right cognate to those of free speech and is equally fundamental. . . . The First Amendment of the Federal Constitution expressly guarantees that right against abridgment by Congress. But explicit mention there does not argue exclusion elsewhere. For the right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions—principles which the Fourteenth Amendment embodies in the general terms of its due process clause." The Oregon statute is accordingly void in its application in this particular case, and the conviction is reversed.

A similar case of equal interest is that of Herndon v. Lowry.[71] Herndon, a Negro, was a paid organizer for the Communist party. He was convicted in Atlanta of attempting to incite insurrection and was sentenced to imprisonment for not less than eighteen nor more than twenty years. The evidence upon which he was convicted consisted of his admission that he had held meetings to start a Communist party and of certain literature found on his person and in his room when arrested. There was no evidence that he had distributed any of the literature except some innocuous leaflets dealing with county relief. Herndon's appeal rested on the allegation that he had been deprived of the freedom of speech guaranteed

[70] 299 U.S. 353, 1937. [71] 301 U.S. 242, 1937.

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by the Fourteenth Amendment and had been convicted under a statute which established no reasonable and ascertainable standard of guilt. In a five-to-four decision, the Court, speaking through Mr. Justice Roberts, sustained both these contentions and reversed the conviction.

In determining whether Herndon had been deprived of freedom of speech and thus denied due process of law, the Court is confronted by the conflicting claims of the "clear and present danger" test stated by Mr. Justice Holmes in the Schenck case[72] and the "bad tendency" test upon which the Court upheld the New York Criminal Anarchy Act in Gitlow v. New York.[73] Herndon urged that his activities created no "clear and present danger" to the state; while the state had contended that it might properly punish his act, which had a tendency to produce results which the state might forbid. The Court undertakes to explain the difference in the applicability of the two rules. "Where the statute merely prohibits certain acts involving the danger of substantive evil, without any reference to language itself, and it is sought to apply its provisions to language used . . . for the purpose of bringing about the prohibited results," it must be shown that the utterances or publications created a "clear and present danger" that the prohibited evil will ensue in order to remove them from the protection of freedom of the press and of speech. On the other hand, the state may validly forbid in the exercise of its police power particular kinds of speech and literature which it believes will imperil the safety of the state. Here the "bad tendency" of the utterances or publication is sufficient to bring them within the ban of the statute, since "the state is not compelled to delay adoption of such preventive measures until the apprehended danger becomes certain." The Georgia statutes had not forbidden the organization of the Communist party within its borders, nor the circulation of its literature. It had merely forbidden the "incitement or attempted incitement to insurrection." Unless it could be shown that Herndon's efforts as a party organizer and as a promoter of Communist meetings and his possession of Communist literature constituted a "clear and present danger" of insurrection—an actual incitement of it—his activities are fully protected by the protection of freedom of speech and press accorded by the Fourteenth Amendment. Evidence is wholly lacking that his activities were of this nature. Furthermore, the statute forbidding incitement to insurrection is so vague in its terms as to furnish no clearly ascertainable standard of guilt. "The statute, as construed and applied, amounts merely to a dragnet which may enmesh anyone who agitates for a change of government if a jury can be persuaded that he ought to have foreseen his words would have some effect on the future conduct of others. No reasonably ascertainable standard of

[72] Schenck v. United States, 249 U.S. 47, 1919. [73] 268 U.S. 652, 1925.

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guilt is prescribed. So vague and indeterminate are the boundaries thus set to the freedom of speech and assembly that the law necessarily violates the guarantees of liberty embodied in the Fourteenth Amendment."

Mr. Justice Van Devanter, with whom Justices McReynolds, Sutherland, and Butler concurred, dissented. The law prohibits incitement to forcible resistance to government. Herndon possessed literature advocating such forcible resistance. It was his job to distribute it and to support the doctrines it advocated. Therefore he comes under the law. The statute is sufficiently definite to meet the test of due process.

(d) *Due Process and State Taxation.* In Carmichael v. Southern Coal & Coke Co.,[74] the Court upheld the Alabama Unemployment Compensation Act against much the same type of constitutional attack as was directed against the federal Social Security Act in the cases already discussed.[75] This is another five-to-four decision, with Mr. Justice Stone speaking for the majority. The statute, which met the criteria set up in the Social Security Act, imposed taxes upon employers and employees the proceeds of which are deposited in the federal "Unemployment Trust Fund." Benefits are paid therefrom, and the usual groups are exempted from the requirements and benefits of the act. In rejecting the various attacks made on the validity of the statute, the Court held (a) that the taxes imposed are valid excises and that the exemptions are reasonable; (b) that these taxes are for a public purpose, i.e., the relief of unemployment; (c) that the statute is not void because the burden of the tax is borne mainly by a class which does not directly benefit from the payments; (d) that the relation of the state statute to the federal statute involves no unconstitutional coercion or delegation of power, for the reasons set forth in Charles C. Steward Machine Co. v. Davis.[76] Mr. Justice McReynolds dissented without opinion. Mr. Justice Sutherland, with whom Justices Butler and Van Devanter agreed, dissented on the ground that the classifications set up in the act are arbitrary and therefore deny the equal protection of the laws. This defect, however, he suggests, could readily be corrected.

The principle of chain-store taxation is pushed beyond previous limits in a Louisiana statute of 1934 which is upheld in a four-to-three decision in Great Atlantic & Pacific Tea Co. v. Grosjean.[77] The statute levied a tax on chain stores graduated on the basis of the number of stores in the whole chain, including those outside the state. In an opinion by Mr. Justice Roberts, the following points are made: (a) The statute does not set up an arbitrary classification. Evidence indicates that the number of stores in the whole chain is a reasonable basis of classification, since the

[74] 301 U.S. 495, 1937.
[75] *Supra*, pp. 285–287.
[76] 301 U.S. 548, 1937.
[77] 301 U.S. 412, 1937.

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competitive advantages of a chain increase with the number of store units in it, regardless of where they are. Each store in Louisiana enjoys advantages derived from the power of the whole organization. (b) The act does not deny due process by taxing property outside the jurisdiction of the state. The tax falls on the right to carry on business in Louisiana. It is measured by the number of stores *in* the state, but the rate is fixed on the basis of the size of the whole chain. This is a proper method of valuing the privilege enjoyed in the state. It is legitimate for the state to regulate chain stores in order to adjust competitive or economic inequalities, and it may properly do this through taxation. It may adjust the tax in order to equalize superior economic power, even when that power is "largely due to the fact that the taxpayer does business not only in Louisiana but in other states." Justices Van Devanter and Stone did not take part in the case. Mr. Justice Sutherland dissented on the ground that the classification is arbitrary. The idea that the size of the chain outside the state affects the competitive powers of stores within the state is "fanciful." Justices McReynolds and Butler agreed with this view.

Problems of jurisdiction for purposes of state taxation are involved in three cases. In First Bank Stock Corporation v. Minnesota,[78] it is held that the appellant, a Delaware corporation doing business in Minnesota, may, consistently with due process of law, be compelled to pay in Minnesota a property tax upon shares of stock which it owns in Montana and North Dakota banks. The state may properly tax intangibles which are used in the corporation's business or are incidental to it when the corporation's business is carried on within the state. In New York *ex rel.* Cohen v. Graves,[79] the Court held that the state could validly tax a resident upon income derived from rents of lands located outside the state, and also upon income from bonds which are physically outside the state when secured by mortgages upon lands outside the state. "Income is not necessarily clothed with the tax immunity enjoyed by its source." Domicile itself affords sufficient basis for a tax on income. In New York *ex rel.* Whitney v. Graves,[80] it is held that a seat on the New York Stock Exchange owned by a non-resident who conducts all his business outside of New York, transmitting to other members orders which require execution on the floor of the Exchange, has such a business situs in New York as to make it possible for the state, consistently with due process, to levy an income tax upon profits realized upon the sale of a right which arose out of that membership. By reason of an increase in the number of members of the Exchange in 1929, each member became entitled to a "right" to one-fourth of a new membership, which in this case was sold for $108,000. This was properly taxable by the state of New York as income.

[78] 301 U.S. 234, 1937. [79] 300 U.S. 308, 1937. [80] 299 U.S. 366, 1937.

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3. Equal Protection of the Laws

A Georgia act of 1935 forbade any fire, casualty, or fidelity insurance company to write policies upon any risks in the state except through a resident agent licensed by the insurance commissioner. Such "resident agents" are not to include any salaried employees of a stock insurance company, but are to include any agents of mutual insurance companies, no matter how they are compensated. Five members of the Court, speaking through Mr. Justice McReynolds, could see no basis for discriminating against the salaried agents of stock insurance companies and in favor of those of mutual companies, and invalidated the act as a denial of the equal protection of the laws. This is the case of Hartford Steam Boiler Inspection & Insurance Co. v. Harrison.[81] Justices Roberts, Brandeis, Stone, and Cardozo, in a dissenting opinion by Mr. Justice Roberts, took the position that the classification had not been shown to be arbitrary with sufficient clearness to overcome the normal presumption of validity.

II. EX POST FACTO LAWS

A Washington statute allowed a court to impose a sentence of not less than a minimum nor more than a maximum term of imprisonment. This was amended in 1935 so as to require a court to impose the maximum sentence. The actual sentence to be served would be determined by a parole board, which could not, of course, increase the maximum sentence. The board might also return a prisoner to confinement after his release at any time before the expiration of the maximum term. In Lindsey v. Washington,[82] the application of the amended statute to offences committed before it became effective is held to be *ex post facto*. Mr. Justice Stone states that "there is no possibility under the new law, as there was under the old law, of an unqualified release before the expiration of the maximum term."

III. LAWS IMPAIRING THE OBLIGATION OF CONTRACTS

In five cases, statutes were attacked as impairing the obligation of contracts, although in some of the cases the due process clause was also pleaded. In none of these did the attack succeed, nor did any of them establish any new principles of law. In People's Banking Co. v. Sterling,[83] statutory changes in the degree of liability of the stockholders of banks and the methods for enforcing it were upheld on the ground that these changes affected remedies rather than substantive liability, and on the further ground that changes in substantive liability were permissible under a reservation of the power to alter or repeal the bank's charter. A New Jersey statute of 1909 provided that the tenure of school teachers and principals should be during good behavior if they had served three consecutive years in a district. It further provided that their salaries

[81] 301 U.S. 459, 1937. [82] 301 U.S. 397, 1937. [83] 300 U.S. 175, 1937.

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might be reduced only for inefficiency or other just cause. In 1933, a statute was passed declaring that economic conditions made necessary that boards of education be empowered to fix salaries, and in the town of West New York salaries were thereupon reduced from ten to fifteen per cent. In Phelps v. Board of Education,[84] the Supreme Court affirmed the decision of the state court that the act of 1909 had not created a contract but was merely a regulation of the conduct of boards of education. The subsequent salary reduction did not, therefore, impair any contract obligation. A North Carolina statute changed the remedy available for enforcing creditor's claims through the sale of mortgaged property and substituted another remedy equally effective. This does not impair the obligation of the debt contract. This is the case of Richmond Mortgage & Loan Corp. v. Wachovia Bank & Trust Co.[85] A Texas statute imposing a tax on the production of oil measured by the extent of production, to be borne ratably by all interested parties, including royalty interests, does not impair the obligation of contracts which call for delivery of oil "free of cost." Barwise v. Sheppard[86] holds that such contracts are subordinate to the taxing power. The power of the state, through action of its public utilities commission, to increase rates for electrical and steam services which have been established by contract is upheld in Midland Realty Co. v. Kansas City Power & Light Co.[87] The reasonable adjustment of these rates does not impair contract obligations nor deny due process.

C. STATE AND FEDERAL RELATIONS

I. STATE TAXATION OF FEDERAL AGENCIES

The state of New York collected a tax on the income received by a resident of the state as general counsel of the Panama Railroad Company. This is held in New York *ex rel.* Rogers v. Graves[88] to be invalid as an interference with a federal agency. The Panama Railroad is an auxiliary to the Canal, and so interrelated with it that together they form a great regulator of national and international commerce. As such, the railroad is an instrumentality of the federal government and immune from state taxation. It follows, therefore, that the salaries and compensation paid to its officers and employees in their capacity as such are also immune. The railroad's counsel was an officer or employee, and not an independent contractor.

II. STATE POLICE POWER AND INTERSTATE COMMERCE

A Maine statute prohibits the sale of any cosmetics within the state in intrastate commerce unless a registration certificate has been secured for each preparation at a fee of fifty cents. The declared purpose of the act is the protection of the public health. Unregistered cosmetics may be seized. The validity of the act is attacked by a manufacturer in New York who

[84] 300 U.S. 319, 1937. [85] 300 U.S. 124, 1937. [86] 299 U.S. 33, 1936.
[87] 300 U.S. 109, 1937. [88] 299 U.S. 401, 1937.

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ships cosmetics into Maine upon orders taken in the state. The sales in Maine are not in the original packages. The Court held the act valid in Bourjois v. Chapman.[89] There is no burden upon interstate commerce. The act is limited by its terms to intrastate commerce and does not regulate the bringing of goods into the state. The fact that goods come from over the state line does not make them immune from the state's police power for the protection of health. There is no discrimination against cosmetics brought in through interstate commerce. The fee is not shown to be burdensome, and the procedure for securing registration certificates is not arbitrary.

III. STATE TAXATION AND INTERSTATE COMMERCE

In two cases, state statutes imposing fees upon interstate commerce purporting to cover the legitimate cost of state supervision and control were held void on the ground that the amounts charged exceeded the amount which the state might charge for such purposes. In Ingels v. Morf,[90] a California statute prohibited "caravaning" (bringing automobiles into the state under their own power or in tow to sell in the state) without a permit which cost $15. While a charge may be made by the state for the use of its highways and the cost of policing the traffic, this fee is held to be about three times too high, and therefore burdens interstate commerce. In Great Northern R. Co. v. Washington,[91] the state required every public utility to pay a fee of one-tenth of one per cent of its gross operating revenue, to be put into a revolving fund to be used for administering the state public service commission law. This is held in a five-to-four decision to burden the interstate business of rail carriers, since the state has not assumed the burden of proof to show that the sums thus collected do not exceed the legitimate cost of the supervision and regulation of such carriers.

A Washington statute levies a two per cent tax upon retail sales, and a two per cent tax on "the privilege of use within the state of any article of personal property." The tax on the use of the property may be reduced by the amount of any sales tax paid on the outside, either to the state of Washington or to any other state. These taxes, which in no way discriminate against interstate commerce, are held valid when imposed on commodities brought in from outside the state. This is the case of Henneford v. Silas Mason Co.[92] An Alabama statute of 1927 imposed upon corporations chartered outside the state a tax of $2.00 on each $1,000 of capital employed within the state. In Southern Natural Gas Corporation v. Alabama,[93] this is held valid in the case of a corporation which carries on both interstate and local business in the state. It is a tax on the "privilege of exercising corporate functions within the state," and its effect on interstate commerce is incidental and remote.

[89] 301 U.S. 183, 1937. [90] 300 U.S. 290, 1937. [91] 300 U.S. 154, 1937.
[92] 300 U.S. 577, 1937. [93] 301 U.S. 148, 1937.

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Tenure and Turnover of the Indiana General Assembly, II. The first installment of this article represented an effort to picture in quantitative terms the constancy and the changeableness of the Indiana General Assembly. There remains the task of isolating some of the factors which have contributed to the turnover that has characterized this body.

An examination of the professional or occupational background of short-service and long-service members of the two chambers seems to

TABLE VIII

DISTRIBUTION OF HOUSE AND SENATE MEMBERS WHO RETIRED FROM SERVICE DURING 1925–33 SHOWING RELATION BETWEEN LENGTH OF SERVICE AT TIME OF RETIREMENT AND OCCUPATION

Retiring at End of	*All Members Who Retired*		*Occupation*						
			Lawyers	*Business Men*	*Insurance and Real Estate*	*Farmers*	*Newspapermen and Publishers*	*Bankers and Brokers*	*Others*
	No.	%	%	%	%	%	%	%	%
House Members									
1. 1st session	187	59.6	65.3	44.9	64.	55.8	66.6	42.9	66.6
2. 2d session	84	26.8	18.7	38.8	24.	31.2	16.7	42.9	22.7
3. 3d session	24	7.6	8.	8.2	8.	7.8		14.2	6.7
4. 4th session	13	4.1	6.7	6.1	4.	2.6			2.7
5. 5th to 9th sessions	5	1.6	1.3			2.6	16.7		1.3
6. 10th or more sessions	1	.3		2.					
Senate Members									
7. 1st session	10	9.8	12.5	14.3		7.1	10.		9.1
8. 2d session	49	48.	50.	50.	66.7	21.4	80.	75.	18.2
9. 3d session	6	5.9	7.5			14.3			9.1
10. 4th session	19	18.6	17.5		33.3	28.7			45.4
11. 5th to 9th sessions	17	16.7	12.5	35.7		21.4	10.	25.	18.2
12. 10th or more sessions	1	1.				7.1			
Both Chambers									
13. 1st session	197	47.3	47.	38.1	47.	48.3	31.3	27.3	59.3
14. 2d session	133	32.	29.6	41.3	35.3	29.6	56.2	54.5	22.1
15. 3d session	30	7.2	7.8	6.3	5.9	8.8		9.1	7.
16. 4th session	32	7.7	10.4	4.8	11.8	6.7			8.1
17. 5th to 9th sessions	22	5.3	5.2	7.9		5.5	12.5	9.1	3.5
18. 10th or more sessions	2	.5		1.6		1.1			
Number of Members Who Retired									
19. House	314		75	49	25	77	6	7	75
20. Senate	102		40	14	9	14	10	4	11
21. Both Chambers	416		115	63	34	91	16	11	86

indicate that no particular group is either especially responsible for the transience or especially free from it. Newspaper men, bankers, and brokers may be eliminated from consideration, since the small numbers of individuals in these classes make generalizations from their experience unreliable. For the same reason, some persons will wish to disregard insurance and real-estate men, and possibly the group called business men.

Looking at the tendency of members to serve one session only before retirement (see Table VIII), business men seem to offer greatest hope of accumulating legislative experience; farmers and lawyers are almost exactly typical of all members. But when the figures showing retirement

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at the end of one and two sessions of service, or one, two, and three sessions, are considered, it becomes evident that short service is not a characteristic peculiar to any occupational group. On the other hand, if service for five or more sessions is examined, there is at least some excuse for saying that insurance and real estate men are a class of early quitters, whereas business men offer substantial hope of accumulating a body of experience. It should be recognized, however, that only six individuals of the business group survived five sessions.

TABLE IX

DISTRIBUTION OF HOUSE AND SENATE MEMBERS WHO RETIRED FROM SERVICE DURING 1925–33 SHOWING RELATION BETWEEN LENGTH OF SERVICE AT TIME OF RETIREMENT AND DISTRICT TYPE

Retiring at End of	*All Districts*		*Districts Classified as to*						
			Number of Counties		*Number of Members*				
	No.	%	*Single-County*	*Multi-County*	*One Member*	*Two Members*	*3, 4, or 5 Members*	*6 or More Members*	*All Multi-Members*
			%	%	%	%	%	%	%
House Members									
1. 1st session	187	59.6	63.5	49.5	57.3	43.8	69.2	64.2	63.7
2. 2d session	84	26.8	23.3	35.7	29.4	25.	17.3	26.2	21.8
3. 3d session	24	7.6	7.9	6.9	7.4	25.	5.8	4.8	8.2
4. 4th session	13	4.1	3.5	5.7	4.4		5.8	2.4	3.6
5. 5th to 9th sessions	5	1.6	1.8	1.1	1.	6.2	1.9	2.4	2.7
6. 10th or more sessions	1	.3		1.1	.5				
Senate Members									
7. 1st session	10	9.8	15.4	6.3	9.4	100.			11.8
8. 2d session	49	48.	41.1	62.4	48.2		53.3		47.
9. 3d session	6	5.9	7.7	4.8	5.9		6.7		5.9
10. 4th session	19	18.6	17.9	19.	20.		13.3		11.8
11. 5th to 9th sessions	17	16.7	17.9	15.9	15.3		26.7		23.5
12. 10th or more sessions	1	1.		1.6	1.2				
Both Chambers									
13. 1st session	197	47.3	56.5	31.3	43.3	50.	53.6		56.7
14. 2d session	133	32.	25.9	42.8	34.9	22.2	25.4		25.2
15. 3d session	30	7.2	7.9	6.	6.9	22.2	6.		7.9
16. 4th session	32	7.7	5.6	11.3	9.		4.5		4.7
17. 5th to 9th sessions	22	5.3	4.1	7.3	5.2	5.6	7.5		5.5
18. 10th or more sessions	2	.5		1.3	.7				
Number of Members Who Retired									
19. House	314		227	87	204	16	52	42	110
20. Senate	102		39	63	85	2	15	0	17
21. Both Chambers	416		266	150	289	18	67	42	127

A superficial examination of Table IX seems to indicate that multi-county (commonly called "joint") districts promote long service, and that single-county districts cut down legislators before they reach their prime. The percentages for house and senate combined, which seem to point to this conclusion, are misleading because nearly two-thirds of the senators come from joint districts, while nearly three-fourths of the house members are from one-county districts. Since senators, as a rule, enjoy longer tenure than representatives, the longer service of senators, to whatever it may be due, will appear to be a characteristic of the joint

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district; the transiency of house members will appear to rise out of the single-county district. When the percentages for house and senate are studied separately, it will be seen that there is little to say in favor of either type of district over the other. The single-county district has produced an undue proportion of one-session members in each chamber. On the other hand, the one-county district has proved practically as satisfactory as the joint district in the house, and distinctly better in the senate, if either one and two, or one, two, and three, sessions of service be taken as the test of transience.[21]

TABLE X

DISTRIBUTION OF HOUSE AND SENATE MEMBERS WHO RETIRED FROM SERVICE DURING 1925–33 SHOWING RELATION BETWEEN LENGTH OF SERVICE AT TIME OF RETIREMENT AND URBAN-RURAL CHARACTER OF DISTRICT[a]

Retiring at End of	*All Districts*		*Type 1*	*Type 2*	*Type 3*	*Type 4*	*Type 5*	*Unclassified*
	No.	*%*	*%*	*%*	*%*	*%*	*%*	*%*
House Members								
1. 1st session	187	59.6	68.1	67.5	55.9	62.1	41.	
2. 2d session	84	26.8	23.4	18.2	26.5	30.5	34.4	
3. 3d session	24	7.6	4.3	6.5	8.8	5.3	14.8	
4. 4th session	13	4.1	2.1	5.2	5.9	2.1	6.6	
5. 5th to 9th sessions	5	1.6	2.1	2.6	2.9		1.6	
6. 10th or more sessions	1	.3					1.6	
Senate Members								
7. 1st session	10	9.8	15.4	4.2	50.	6.5		33.3
8. 2d session	49	48.	53.8	50.	25.	41.9	65.3	
9. 3d session	6	5.9	7.7	4.2		6.5	4.3	33.3
10. 4th session	19	18.6	7.7	20.8	25.	25.8	13.	
11. 5th to 9th sessions	17	16.7	15.4	20.8		16.1	7.4	33.3
12. 10th or more sessions	1	1.				3.2		
Both Chambers								
13. 1st session	197	47.3	56.7	52.6	54.8	48.4	29.7	
14. 2d session	133	32.	30.	25.7	26.2	33.3	42.9	
15. 3d session	30	7.	5.	5.9	7.1	5.6	11.9	
16. 4th session	32	7.7	3.3	8.9	9.5	7.9	8.3	
17. 5th to 9th sessions	22	5.3	5.	6.9	2.4	4.	6.	
18. 10th or more sessions	2	.5				.8	1.2	
Number of Members Who Retired								
19. House	314		47	77	34	95	61	0
20. Senate	102		13	24	8	31	23	3
21. Both Chambers	416		60	101	42	126	84	3

[a] For description of district-types, see note 22.

The figures (Table IX) for single-member and multi-member districts show in even more convincing fashion that neither transience nor permanence is peculiar to either type of district. Each type contributes in equal degree to short and long service.

[21] One might expect greater turnover in the joint district for two reasons: (1) rotating agreements might be more likely to exist where two or more counties compose the district, and (2) joint districts are usually more populous, making campaigning more costly, since ordinarily a part of the joint district is also a separate one-county district. Maps depicting the peculiar Indiana layout of districts can be found in the annual *Statistical Report for the State of Indiana*. Rotating agreements are discussed below, pp. 322–324.

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Table X represents an effort to ascertain whether there is an observable connection between the urban-rural character of a district and any tendency to return legislators for cumulating service. For convenience in expression, these district types have been numbered and will be referred to by number. The strictly rural districts (type 5)[22] have clearly the best record for stability. On any basis of comparison, they have the best record for long service in the house, and they have produced no one-session senators. When house and senate turnovers are combined, the strictly rural group shows the smallest percentage of one-, and of one- and two-session men, and next to the lowest percentage of one-, two-, and three-session men. On the other hand, the semi-rural class (type 4), while having a strong record of low turnover in the senate, is marked by especially high turnover in the house.

The strictly urban area (type 1) appears to be the most unstable, particularly if percentages for house and senate combined are accepted as a convincing test. If the figures for service of senators from district-type 3 be disregarded because of the small number of individuals involved, then the strictly urban (Indianapolis) districts show highest turnover from the point of one, or one- and two-, and of one-, two-, and three-session, men in both senate and the two chambers combined.[23]

This record of high turnover among Indianapolis members may seem especially significant in view of the fact that the state capital is located in the district. One might suppose that legislators who are able to live at home during sessions would be most likely to continue service. One hesitates, however, to attach much importance to the differences in turnover in the two extremes of district type. The differences are small,

[22] Descriptions of the district types were omitted from Table X because of space limitations. The types are as follows:

Type 1—80 per cent or more of the district population is in incorporated places of 300,000 or more population.

Type 2—50 per cent or more of the district population is in incorporated places of 30,000 to 99,999 population.

Type 3—50 per cent or more of the district population is in incorporated places of 5,000 to 29,999 population.

Type 4—50 per cent or more, but less than 80 per cent, of the district population is in unincorporated places or incorporated places of less than 50,000 population.

Type 5—80 per cent or more of the district population is in unincorporated places or incorporated places of less than 5,000 population.

The apparently peculiar classification of districts is explained by the fact that a classification of 11 types was worked out, but only the ones here indicated are represented in Indiana.

[23] These urban members are chosen as follows: 11 representatives are chosen from Marion county at large, and one is chosen from the Marion-Johnson county joint district; five senators are chosen from Marion county at large, and one represents the Marion-Johnson county joint district.

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neither type deviates far from the norm of all members, and the district types intermediate in urbanization do not fit into any picture of correlation. Furthermore, the number of legislators in any group is too small to afford much security in generalization. Conclusions as to the relative fickleness of urban and rural populations ought to rest upon a more representative sample, perhaps both in time and geographic area, than is utilized here, and ought to take into account the cause of the legislators' retirement, i.e., whether due to defeat in general election, defeat in party primary, voluntary retirement, etc.[24]

An analysis of the high and the low turnover districts fails, in like manner, to indicate that any particular district type is especially responsible for the fugitive or the constant legislator. During the six-session period of this study, a one-member district might have ousted an incumbent five times. Eleven house districts achieved this maximum turnover. Sixteen other districts made four out of five possible changes in their representation—a total of twenty-seven high-turnover house districts. Only one house district was absolutely free of turnover, keeping the same member throughout the six sessions. Five other districts had only one change. These six districts may be called the low-turnover house districts.

In order to isolate high- and low-turnover senate districts, this investigation was pushed back to the 1923 session, permitting observation of representation in the senate during four terms. Any senate district thus had three opportunities to change its representation. Sixteen districts achieved this hundred per cent turnover. Two districts made no change, maintaining the same person in the senate for four terms. These eighteen districts are represented in Table XI as high- and low-turnover senate districts.

Table XI permits a comparison of these high- and low-turnover areas of the two chambers. It will be seen at once that there is no correlation between turnover and either one-county or multi-county districts. High-turnover senate districts are distributed between the two district types in exactly the same proportion as are all senate districts, and both high- and low-turnover house areas are distributed between the two types in surprisingly similar ratios.

A study of the way in which high- and low-turnover areas of the two houses are distributed between single-member and multi-member districts shows results surprisingly near those observed for single-county and multi-county districts.

[24] The punched cards used in this study indicate for each legislator who has retired whether his departure was due to primary or election defeat. The inconclusiveness of any generalizations which might result from the small number of individuals involved in the present study made it seem fruitless to carry out any analysis of the relation of district types to cause of turnover.

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The small number of districts involved makes the figures for distribution between urban-rural types of little validity. At least this much may be said, however: these figures offer no comfort to any preconceived theories that one or another type of district is responsible for transience or stability.

It is no doubt usually taken for granted that the longer service accumulated by senators is due almost altogether, if not entirely, to the fact that members of the upper chamber are elected for a term of two regular sessions instead of only one as in the case of representatives.

TABLE XI

SELECTED HIGH- AND LOW-TURNOVER HOUSE AND SENATE DISTRICTS CLASSIFIED ACCORDING TO THREE BASES

Districts Classified	*All Districts*				*High Turnover Districts*				*Low Turnover Districts*			
	House		*Senate*		*House*		*Senate*		*House*		*Senate*	
	No.	*%*	*No.*	*%*	*No.*	*%*	*No.*	*%*	*No.*	*%*	*No.*	*%*
As to Number of Counties												
1. Single-County	46	61.3	11	25.	19	70.4	2	25.	4	66.7	0	
2. Multi-County	29	38.7	33	75.	8	29.6	6	75.	2	33.3	2	100.
As to Number of Members												
3. Single-Member	66	88.	42	5.5	25	92.6	8	100.	6	100.	2	100.
4. Multi-Member	9	12.	2	4.5	2	7.4	0		0		0	
As to Urban-Rural Character												
5. Type 1	2	2.7	2	4.5	1	3.7			0		0	
6. Type 2	11	14.7	10	22.7	6	22.2	2	25.	0		0	
7. Type 3	11	14.7	3	6.8	3	11.1			1	16.7	0	
8. Type 4	28	37.2	16	36.4	13	48.2	3	37.5	2	33.3	0	
9. Type 5	23	30.7	12	27.3	4	14.8	3	37.5	3	50.	2	100.
10. Unclassified	0		1	2.3								
11. All Classes	75	100.	44	100.	27	100.	8	100.	6	100.	2	100.

Senators thus escape one-half of the nuisance and risk of campaigning which the house members must undergo. The hazards of nomination and election contests ought in all common sense to work fewer casualties on senate membership than on that of the house. Similarly, the senator who finds the lot of the legislator not to his liking is virtually forced to do double the time of his happier colleague across the corridor who may wash his hands of lawmaking and retire at the end of one session.

It is at least possible, however, that the longer service of senators is due in part to other reasons, perhaps the greater prestige value of service in the senate, or the fact that senators are elected from more populous districts.[25]

The writers have made no effort to determine whether legislators attach greater prestige value to service in the senate, and, it follows, have made no attempt to measure the effect of any such sentiment on differences in the length of service in the two houses. Any likelihood that the greater population and geographic extent of the senate district con-

[25] The state is divided into 44 senate districts and 75 house districts.

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tributes to the longer service of senators seems to be dispelled by the cursory analysis offered in Table XII. With each regular session of the General Assembly, the terms of 25 senators and 100 representatives expire. The figures in this table show that the percentage of senators that fail to succeed themselves at the expiration of a term of service is, on the average, enormously greater than the percentage of representatives. In one session, the loss of senators was, to alter slightly the phrase of Father Noah, a "complete" deluge. Furthermore, of those who seek to continue their service, as evidenced by the fact of standing in the primary for renomination, a much higher percentage of representatives than of senators survive the nomination and election contests.

These facts doubtless offer no proof that senators would have fared better if their districts had been smaller in population and area. But they surely do discredit any theory that the longer service enjoyed by senators is attributable in part to the larger area of representation. They seem in like manner to demonstrate that any greater prestige value which service in the senate may bear falls short of affecting in any material way the amount of legislative service acquired by members of that chamber. It seems not unreasonable, in view of the foregoing discussion, to reassert the presumption that the longer service enjoyed by members of the senate is due mainly, if not altogether, to the fact that the term for which senators are elected is twice as long as that for which house members are chosen.

Indiana is, historically, a bitter battleground of the two major parties. Throughout the state, Democratic and Republican parties are fairly evenly matched.[26] It might be supposed, consequently, that the turnover of the General Assembly is due principally to defeat of incumbent legislators in the fall elections. The figures in Tables XIII and XIV showing the immediate cause or avenue of retirement from legislative service may come, accordingly, as something of a surprise, showing as they do that only a small percentage of the members of either house have been eliminated through the triumph of the opposite party. During the period of this study, between one-fifth and one-fourth of all legislators who terminated their service did so because of election defeats.[27] In only two

[26] Sixty-six of the 92 counties shifted in party control one or more times, as evidenced by the party affiliation of the county auditor, during the period 1916–34. Approximately 82 per cent of the population of the state lives in these 66 counties.

[27] It must be remembered that the figures in Tables XIII and XIV, as well as all figures given in this section of the article, are descriptive of retirement from service in the given chamber. The writers have not attempted to learn why a member failed to succeed himself in the legislature, if at some later date he saw further service in the same chamber. Only in case the member did not reappear in that chamber up to and including the 1935 session was any account taken of the cause or avenue of his leaving. This is not true of Table XII, which takes account of all members of the General Assembly.

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TABLE XII

DISTRIBUTION BY SESSIONS OF ALL HOUSE AND SENATE MEMBERS SHOWING TENDENCY TO SEEK REËLECTION AND SUCCESS IN ACHIEVING REËLECTION

Retiring at End of	House						Senate					
	No. Seeking Return	Defeated in Primary or Election	Returned		Not Returned		No. Seeking Return	Defeated in Primary or Election	Returned		Not Returned	
			No.	% of Those Seeking Return	No.	% of Those Whose Terms Expired			No.	% of Those Seeking Return	No.	% of Those Whose Terms Expired
1. 1925 Session	66	31	35	53.	65	65.	16	10	6	37.5	19	76.
2. 1927 Session	69	25	44	63.8	56	56.	12	5	7	58.3	18	72.
3. 1929 Session	65	39	26	40.	74	74.	12	5	7	58.3	18	72.
4. 1931 Session	62	28	34	54.8	66	66.	17	17	0		25	100.
5. 1933 Session	54	22	32	59.3	68	68.	8	5	3	37.6	22	88.
6. All Sessions	316	145	171	54.1	329	65.8	65	42	23	35.4	102	80.2

TABLE XIII

DISTRIBUTION BY SESSIONS OF HOUSE AND SENATE MEMBERS WHO RETIRED FROM SERVICE DURING 1925–33 SHOWING TENDENCY TO SEEK AND SUCCESS IN ACHIEVING REËLECTION

Retiring at End of	House									Senate								
	Total Number Retiring	Defeated in Primary		Defeated in Election		Other Known Causes		Unknown Causes		Total Number Retiring	Defeated in Primary		Defeated in Election		Other Known Causes		Unknown Causes	
		No.	%	No.	%	No.	%	No.	%		No.	%	No.	%	No.	%	No.	%
1. 1925 Session	60	15	25.	13	21.7	4	6.7	28	46.6	18	5	27.8	4	22.2	2	11.1	7	38.9
2. 1927 Session	51	11	21.6	9	17.6	3	5.9	28	54.9	18	4	22.2	1	5.6	0		13	72.2
3. 1929 Session	74	12	16.2	27	36.5	1	1.4	34	45.9	17	0		5	29.4	1	5.9	11	64.7
4. 1931 Session	61	15	24.6	10	16.4	8	13.1	28	45.9	27	8	29.6	9	33.3	0		10	37.1
5. 1933 Session	68	4	5.9	18	26.5	2	2.9	44	64.7	22	3	13.6	2	9.1	0		17	77.3
6. All Sessions	314	57	18.2	77	24.5	18	5.7	162	51.6	102	20	19.6	21	20.6	3	2.9	58	56.9

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elections did defeats at the hands of the opposite party count for as much as one-third of the migration from either house. Just one-third of the senators who terminated their legislative careers with the 1931 session were ousted by the general election of 1932; and a little more than one-third of the house members who wound up their venture at lawmaking

TABLE XIV

DISTRIBUTION OF HOUSE AND SENATE MEMBERS WHO RETIRED FROM SERVICE DURING 1925–33, RELATING CAUSE OF RETIREMENT TO LENGTH OF SERVICE AT TIME OF RETIREMENT

Retiring at End of	*Cause of Retirement*				
	No. of Members Who Retired	*Defeated in Primary* %	*Defeated in Election* %	*Other Known Causes* %	*Unknown Causes* %
House Members					
1. 1st session	187	18.2	27.8	4.8	49.2
2. 2d session	84	20.2	15.5	6.	58.3
3. 3d session	24	20.8	25.	12.5	41.7
4. 4th session	13	7.7	30.8	7.7	53.8
5. 5th to 9th sessions	5	0	40.	0	60.
6. 10th or more sessions	1	0	0	0	100.
Senate Members					
7. 1st session	10	0	20.	0	80.
8. 2d session	49	16.3	24.5	2.1	57.1
9. 3d session	6	16.7	16.7	0	66.7
10. 4th session	19	36.8	10.5	0	52.7
11. 5th to 9th sessions	17	23.5	23.5	11.8	41.2
12. 10th or more sessions	1	0	0	0	100.
Both Chambers					
13. 1st session	197	17.3	27.4	4.6	50.7
14. 2d session	133	18.8	18.8	4.5	57.9
15. 3d session	30	20.	23.3	10.	46.7
16. 4th session	32	25.	18.8	3.1	53.1
17. 5th to 9th sessions	22	18.2	27.3	9.1	45.4
18. 10th or more sessions	2	0	0	0	100.

in 1929 owed their exit to defeat in the general elections of 1930. In two instances (senators quitting service in 1927 and 1933), casualties in the fall elections counted for less than one-tenth of the retirements.[28]

[28] Table XIII correctly shows that 27 senators terminated service in that chamber in 1931. In addition to the 25 whose terms expired, two senators resigned. None has since returned to the senate.

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Elimination in the primary election has been only slightly less important than general election defeats. Death or election to the other chamber have accounted for very little of the turnover.[29] More than one-half of the members who have retired have done so without a fight in either primary or general election.

The real reasons back of failure of legislators to seek renomination and reëlection are undoubtedly diverse, are not likely to be revealed to the research student, and perhaps in most instances are unknown to the legislator himself. It may be assumed that the service of some Indiana assemblymen was terminated by deaths not recorded in the legislative records. Illness or other physical disability may have prevented some from seeking another term. Some, certainly, surrendered their seats in the legislature to accept other public offices. A number, perhaps, wished to extend their legislative careers but found themselves squeezed out by a machine or a clique whose support they considered necessary for success at the polls.

Because of lack of confidence in the research procedures available, the writers have made no systematic effort to probe into the motivation of those members who have retired from service without contesting for the retention of their seats. The figures in Tables XIII and XIV offer, in themselves, little hint as to why the percentages for "voluntary retirement" are so high. There seems to be no particular relation between cause of retirement and the length of service achieved at the time service was terminated. On the whole, it may be said that new members and old timers have travelled in like proportions the same routes in taking leave of the legislature.

It may be supposed that much of the so-called voluntary retirement is due to a strong fear of defeat in primary or general election. The meagre evidence collected in this investigation cannot be said to impeach this hypothesis, but at the same time it lends it no support. Any serious effort to ascertain which members were confident, which pessimistic, of success in primary or general elections would entail difficulties which the writers are not yet ready to grapple with. Some superficial observations on the behavior of house members may, however, be offered.

Presumably most members of the Indiana legislature foresaw that 1932

[29] The category "Other known causes" in Tables XIII and XIV embraces only members known to have died during the sessions or before the succeeding election, and members who were elected to the other chamber. The writers have not as yet searched the primary and election returns to ascertain which members terminated their service in one house with an unsuccessful candidacy for membership in the other chamber. Nor has any effort been made to ascertain what members sought other offices in the election succeeding their final session. Resignations from either house before expiration of the term have been included under "Unknown causes."

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would be a Democratic year; presumably a large percentage of the Republicans in the 1931 Assembly saw defeat in store for them if they fought to retain their seats; presumably most of their Democratic colleagues believed that if they survived the primary their reëlection was assured. The figures show that 36 per cent of the Republicans in the 1931 house yielded their seats without a contest, whereas only 25.3 per cent of the Democrats retired from service without a battle. These figures seem to support the thesis that tendency to stand for renomination and reëlection is a barometer of optimism or pessimism of party success. The figures for the 1934 campaign support the thesis also. While Indiana went Democratic in statewide elections that year, the Republican party substantially improved its position in the house of representatives, wresting twenty-six seats from the Democrats. An examination of their behavior shows that only 8.6 per cent of the 1933 Republican representatives gave up their seats without a contest, whereas 24.2 per cent of the 1933 Democratic members made no effort to hold their positions.[30]

But here support for the thesis stops. The 1928 elections fortified Republican strength in the house, yet 33.3 per cent of the Republicans failed to contest their seats as against 18.9 per cent of the Democrats. The strategy was much the same in the campaigns of 1926 and 1930. Both of these elections ran in favor of the Democrats, yet in each case a higher percentage of Democrats than of Republicans yielded their seats without a contest. The figures for 1926 were: Democrats, 40 per cent, Republicans, 25.9 per cent; for 1930, Democrats, 40 per cent, Republicans, 32.5 per cent.[31]

It must be emphasized strongly that the foregoing figures are the crudest kind of index to the relation between fear of defeat and tendency to seek reëlection. Members of the legislature may, in any particular case, have misjudged the likelihood of party success in their respective districts. It may be that when chances for party success are strongest, primary battles are hardest, thereby making the year of greatest party optimism the time of greatest discouragement for the individual member who wishes to succeed himself. Again, when hope for party success is highest there may be a pronounced tendency to abandon the seat in the legislature and seek a more lucrative office. A satisfactory measure of the relation of confidence or doubt of victory at the polls to tendency to contest for reëlection will wait upon the kind of inquiry that can be made

[30] The caution voiced in note 27, *supra*, p. 317, is applicable in this and the succeeding paragraphs. The figures are for members who terminated their service in the stated chamber.

[31] Similar figures for the senate have not been computed. The number of members of either party whose term expires with any given session is so small as to make unconvincing any percentages which might be derived.

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only at the scene, and at the moment when the perplexed politician is making his decision.[32]

It is frequently suggested that legislative turnover is due in large part to agreements to rotate the positions, either to different geographic parts of the district or to different factions of a party. If such understandings play an important rôle in the survival or disappearance of Hoosier lawmakers, their force has been confined, during the period of this study, to a very small number of districts. In 64 of 75 house districts, one or more of the incumbents succeeded themselves. Rotating agreements worked only imperfectly, if at all, in these districts. Eleven house districts experienced 100 per cent turnover during the period 1925 to 1935. In 10 of these 11 districts, any understanding that one term was the limit for a legislator was defied by one or more of the incumbents. In the other district, a three-county single-member district, none of the five representatives stood in the primary for retention of his seat, but one did try for and obtain a seat in the senate.[33] Letters to persons likely to be informed about political maneuvering in this eleventh district elicited replies showing a very general understanding that there was no agreement in either party that the legislative position should be rotated or handed about to difference areas of the district.[34]

[32] The writers have considered the desirability of isolating districts which returned a member of the same party to the legislature from those which returned a member of different party than the incumbent. A study of tendency of incumbents to contest in these two sets of districts would offer a refinement of the crude analysis attempted in the foregoing paragraphs. Data making possible such a study are not recorded on the punched cards. The enormous outlay of time and effort which would be required for the inquiry seems not justified by the inconclusive results which would be obtained.

[33] At the time of writing, data for the 1936 campaign were not available. The facts and figures on turnover in the house which are offered in this section of the article are based on membership in the assemblies of 1925 to 1933 and the campaigns of the succeeding years. Any seat, therefore, might have changed hands five times.

The caution offered in note 27, *supra*, p. 317, is not applicable here. In the following discussion, account is taken of members who failed to succeed themselves, even though they subsequently won back their seat. Thus a one-member district that experienced 100 per cent turnover might actually have sent only two different individuals to the house. Cf. the table in note 46, *infra*, pp. 330–331.

[34] The following procedure was used in corresponding with persons in high turnover districts of both house and senate. Personal letters describing the extent of legislative turnover, accompanied by a suggested answer form, were sent to present and former members of the legislature from that district. If the replies showed differences of opinion as to whether rotating agreements existed, or if the number of replies was less than three, further letters were sent to other persons thought likely to be informed, including unsuccessful candidates for the legislature, county party chairmen, and newspaper editors. In the case of the "eleventh" high turnover district just described, nine replies were received, four from former representatives, two from county chairmen, and three from newspaper editors. Seven answers stated

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Of the other 10 house districts where turnover was 100 per cent, there were three districts in which only one incumbent stood to succeed himself, in two of these cases the incumbent being successful at the primary but losing in the general election. In three other districts, only two incumbents sought to retain their seats; in still another three districts, three incumbents sought to continue their service; and in one other district all five incumbents made an effort to retain their seats. The 11 districts of 100 per cent turnover are thus accounted for.

In any district where three or more of five representatives stood in the primary for renomination, it may be assumed that rotating agreements, if they existed, were working only ineffectively. This assumption is supported by the fact that in each of the five districts of this character, at least one of the incumbents won his renomination, and in three of them, three incumbents received the indorsement of their parties at the polls.

Letters were sent to former representatives and other persons with political connections in the seven districts where less than three of the five incumbents sought to retain their seats.[35] In every case, except possibly two districts, the replies furnished convincing evidence that no agreements existed.[36]

It is entirely possible, of course, that definite rotating agreements may exist in districts which were not circularized. The results of the correspondence make it seem improbable, however, when one considers the high agreement of the replies, and the fact that the inquiry covered that one-tenth of the house districts which were thought most likely to be affected by such understandings.

Since the term of senators is twice as long as that of house members, only three elections were available, in the period covered by this study, for determination of high turnover senate districts.[37] All but 16 of the 44 districts reëlected a senator one or more times. In 11 of these 16 districts, one or more of the sitting members sought to succeed himself.[38] There

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in varying degrees of positiveness that no rotating agreements were in operation in either party, one (from a newspaper editor) asserted that rotating agreements were in effect in both parties, while a ninth failed to make a definite reply on this point.

[35] Four of these districts consisted of one county each; two were two-county districts; and one was composed of three counties.

[36] In six of the seven districts, all replies clearly indicated, if they did not state categorically, that no agreements existed; in like manner they denied that a popular sentiment in favor of passing the position around had been effective in either party. For one of these six districts, however, only two replies were received. The seventh district produced some difference of opinion, as was indicated *supra*, note 34.

[37] In order to carry the analysis over three elections, the collection of data had to be pushed back to 1923. See *supra*, p. 315.

[38] In one of these 10 districts, all three incumbents obtained renomination; in one district, two obtained renomination.

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are, then, five districts in which the failure of any senator to contest for retention of his seat suggests the likely existence of rotating agreements.

Correspondence with informed persons in these five districts leads to the conclusion that agreements to rotate the senatorship were effective in one of the three two-county districts, and that no rotating agreements were operating in the two one-county districts. The correspondence from two of the two-county districts revealed difference of opinion. In the case of one district, four replies asserted the existence of effective agreements, two denied that such understandings existed, while a seventh, all but unintelligible, seems to require a translation which indicates that no agreement obtained. In the case of the other district, two replies stated positively that a rotating agreement ruled in the majority party, one just as categorically asserted the opposite opinion, while a fourth testified to a "gentlemen's agreement" that "should the senator in office not care to be a candidate again, then the next candidate should come from the other county" [*sic*].

It seems reasonable to suppose that rotating agreements were effective in some of the non-circularized multi-county senate districts, but one may venture the opinion that such arrangements are far from being an important cause of high turnover in the Indiana senate.[39]

The first installment of this article represents an attempt to furnish a picture of the permanence and the transiency of the Indiana General Assembly. No effort was made to test the importance of legislative experience to effective lawmaking; it was assumed that a positive relationship existed. This article ought not to close without some effort to depict in a graphic way the significance of the high turnover which was found to exist in the Hoosier legislature. If the following comments do not add distinctiveness to one's understanding of the significance of turnover, they ought at least to supply color.

Five laws concerning workmen's compensation were enacted during the period of this study, 1925 to 1935. Two were enacted in the 1927 session, and one was passed in each of the sessions of 1929, 1933, and 1935. The five bills were referred to, and reported upon by, the following committees of the house: Insurance and Judiciary A in 1927; Judiciary

[39] Cf. Tables IX and XI and the accompanying discussion, *supra*, p. 315. Of the senators representing joint districts, 68.7 per cent terminated their service at the end of one term or less, while 56.6 per cent of those representing one-county districts were equally early quitters. The writers are fully aware that an adequate analysis of rotating agreements would necessitate inquiry into the place of residence and the party and factional affiliations of members of the legislature and of the candidates who opposed them in primary and general election. The writers were concerned here simply to probe the knowledge and opinion of observers in a sampling of districts where it seemed most likely that rotating agreements might be found.

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B in 1929; Labor in 1933; and Insurance in 1935. It will be of interest to see what contact the members of these committees had enjoyed with previous workmen's compensation legislation.[40]

Three of these committees consisted of 13 members each, one had 12 members, and the other 11—a total of 62 committee memberships. A minimum of 13 different individuals could, conceivably, have occupied these 62 places. Actually, 54 different persons were involved.

When the 1927 house committee on insurance convened to consider H. 113, the reminiscences of past exploits in dealing with such bills must have been soon exhausted. Eight of the 13 members had never been in the legislature before; what they knew was presumably what they had read in the papers. The other five members of the committee had opened their legislative careers in the last previous session. Four of these five had been members of a committee in that session which had considered workmen's compensation bills, none of which became law.

The 1927 committee on Judiciary A was somewhat better placed. Only six of the 12 members were new to legislative service. The chairman had served in six previous sessions and one other of the six veterans had been in the legislature in 1923 and 1925. The chairman had in five previous sessions been on committees which reported on compensation legislation, and three others had been on one of the 1925 committees to which such bills were referred.

The chairman of the 1929 committee on Judiciary B had had one previous experience with committee consideration of compensation legislation. Six members of the committee were newcomers to the legislature. Of the remaining six members, only two had served in more than one previous session, one of these having experienced two, and the other member five, previous sessions. Five of the 13 members of the committee had in one session each been on a committee which considered compensation legislation.

The 1933 house committee on labor, which reported out the compensation legislation enacted in that year, included only four members who had ever before been in the legislature. One of these could tell the seven first-session men about the work of the same committee in the previous session, when three compensation bills were considered, though none became law. One other member could recount what he had seen, if anything, from the floor in two previous sessions, and two others could tell what they had observed in the same way in one session each of service.

The 1935 house committee on insurance must have felt the iron hand of precedent least of all. Only three of the 13 members had previously

[40] In computing these data, account was taken of service in either house, and of service on any committee of either house to which workmen's compensation legislation was referred.

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been in the legislature, and the chairman was not of that group. Two of these three veterans had only the 1933 session for their instruction; the other had seen three sessions of service. None of the three had had any committee experience with workmen's compensation.

View now the senate, and from a different angle. A very considerable part of the work of any legislative body is the amendment of previous enactments. As Woodrow Wilson once wrote, " . . . the greater part of the labor of legislation consists in carrying the loads recklessly or bravely shouldered in times gone by, when the animal which is now a bull was only a calf."[41] The 1929 session of the Indiana General Assembly enacted statutes which amended no less than 112 previous laws. Sixty-seven of these amended statutes were enacted in one or another of the five sessions (1919 to 1927) immediately preceding the 1929 session; 28 were enacted prior to the 1911 session; 11 dated from before 1900. Lawmakers faced with amendment proposals in 1929 could hardly be expected to recollect events surrounding the enactment of legislation thirty years on the statute books. But citizens have a right to expect that some of the doctors who attended the calving of at least the younger bulls shall be present when the amendatory operations take place.

In order to measure the carry-over of personalities between original enactment and the amendatory action of 1929, one of the bills reported by each of the 22 senate committees which handled amendatory legislation in the 1929 session was selected for study.[42] Eight of the 22 original acts had passed in 1927, four in 1925, two in 1923, four in 1921, and one each in 1919, 1917, 1915, and 1907.[43]

Observe now the equipment, in memories, of the members of the 22 selected senate committees of 1929. The committee on finance, reporting an act to amend a law of 1907, could not produce a single member who had been in either chamber of the Assembly when the original law was passed. The committees on public libraries and cities and towns, considering respectively the amendment of acts of 1915 and 1917, were in the same quandary. The committee on public health, debating the amendment of a statute enacted in 1919, could find what help it could in the

[41] *Congressional Government* (Boston, 1885), p. 295.

[42] The 1929 session was chosen because it contained a better representation of experienced senators than any other session. For data, see Table III in this REVIEW, Feb., 1938, p. 60. Facts concerning the number of statutes amended are from table headed "Acts Amended," in *Acts, 1929*, p. 849. The list of committees which reported amendatory legislation was prepared from the *Senate Journal* for 1929.

[43] Except for the 1907 law, the distribution of the 22 acts is roughly proportionate to the time of enactment of the 76 amended laws which dated from 1915 to 1927. The 1907 law was included because it was the only amendatory act reported by the committee on finance.

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reminiscences of a lone member who had been a spectator, perhaps a participant, from the floor of the house when the original law was passed in 1919.

Four of the twenty-two selected committees reported on amendments to laws enacted in 1921. Two of these four committees were dependent upon the memories of one member each who had been in the senate in 1929 but not on the respective committees which considered the laws in question. One of the other two committees could turn to a single member who had been a participant in the deliberations of the 1921 senate committee. The fourth committee had access, through two personalities, to the experience of one of the 1921 committees. The chairman of the 1929 committee had been a member of the earlier senate committee and another member of the 1929 committee had been chairman of the 1921 senate group.

Two of the select committees reported amendments to laws of 1923. One of these included a man who had been chairman of the senate committee of 1923. The other committee could turn to one man who had served on the house committee which reported the original law, and to another member who had served in the senate of 1923, though not on the reporting committee.

Each of the four selected committees which recommended amendments to 1925 legislation enjoyed some personal connection with the formulation of the original laws. One contained the chairman of the 1925 house committee and four others who had been members of the 1925 senate. Another included the chairman of the 1925 senate committee and three others who had served in one or the other chamber in 1925. The other two committees, Education and Judiciary A, were still more intimately connected with the birth of the original statutes. In the case of each, the chairman and one other member had served on the reporting senate committee of 1925. One other member of Education had served in the 1925 senate, and four additional members of Judiciary A had served in one or the other chamber of the 1925 Assembly.

When legislative assemblies are amending statutes enacted in the last previous session, one may hope for the maximum tie-up between the personnel of the original reporting committees and the committees deliberating change. Thirty-two members (64 per cent) of the 1929 Indiana senate had served in one or the other chamber in the previous session. One might presuppose from this carry-over of personnel that any 1929 committee, deliberating amendment of 1927 legislation, would include a substantial representation of those who had reported out the original enactment two years before. Any such presupposition is disproved by the facts.

Only one of the chairmen of the eight selected committees of 1929 had

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served in the 1927 Assembly, and his committee assignments had not included the legislation referred to him two years later. Three of the 1927 chairmen whose committees reported on the original bills were members of one or another of the eight selected committees of 1929. One of the 1929 committees could produce no member who had sat in committee deliberation in 1927 when the original law was passed. Three other committees had one member each who had participated in committee action on the original laws. Of the four remaining selected committees, two had two members each, and two had three members each, who were renewing in 1929 a committee experience which they had begun two years before.

The 22 selected committees of the 1929 senate which have just passed in review represented 174 memberships. Only 24 of these members could turn back, in their own minds, to committee experience with the origin of the law before them for amendment in 1929. Forty-two other members had served in one or the other house when the original enactment was made. The remaining 108 of the 174 committee members proceeded on their amendatory deliberations without benefit of personal recollections of the events of original passage.[44] If competent handling of the bull comes best from those who were midwife to the calf, then the legislative experience of the Hoosiers has not been a happy one.

Different minds will draw different morals from this story of legislative tenure. Facts acquire their meaning from the assumptions which give them a frame of reference. The writers, standing on the assumptions announced in the opening paragraphs of this article, are forced to conclude that the Indiana General Assembly is utterly inadequate for the service which modern life demands of a legislative body. A group afflicted with the transiency pictured in the foregoing pages can only rarely act upon information in making public policy, and can only infrequently, if ever, proceed confidently upon the equally important task of impressing upon the other departments their responsibility for intelligent and honest public service.

A major part of the research which entered into the preparation of this article was undertaken in the hope of throwing in relief some of the factors or conditions responsible for the high turnover which was found to exist. The quantitative procedure which was adopted yielded only negative results, isolating no factor which can be said to nourish the

[44] These figures are for committee memberships, not for individuals. It must be borne in mind that the foregoing analysis of carry-over of personalities from original enactment to amendment is based on one amendatory law reported by each of 22 committees of the 1929 senate. See *supra*, p. 326.

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Hoosier habit of skurrying through the legislative halls. A subjective inquiry, undertaken as a supplement to the quantitative procedure, seems to have enjoyed better success.

In order to learn of the existence of rotating agreements, letters were sent to more than 80 former members and candidates for the legislature, newspaper editors, and county chairmen of political parties. A suggested answer sheet was enclosed, one question calling for opinion as to the cause of the brevity of legislative service. Former members of the house and senate who had retired at the end of one term without effort to obtain renomination were asked: "Would you be willing to indicate the principal reasons why you did not stand for renomination for state representative [or senator] after your first term?" Others were asked: "Would you be willing to indicate what you consider to be the principal reasons for the high turnover of representatives [or senators] from your district?" Neither the letter of inquiry nor the suggested answer sheet made any reference whatever to monetary compensation, yet seven of the nineteen former legislators who offered an explanation of their failure to seek renomination gave inadequate monetary compensation as a cause.[45] Thirty-one other correspondents suggested causes for high turnover in their districts; 20 of these listed insufficient pay.

Some answers will bear quotation. A newspaper editor writes: "Members of the legislature receive very meagre pay, and it is a sacrifice for anyone to attend these sessions. One term is about all anyone can stand unless he has an axe to grind." A Republican party chairman of one of the more populous counties states: "In the first place, the pay of the state legislator is $10.00 per day, for the 60 days that he is in attendance every other year. He cannot possibly pay his expenses out of this pay. Add to it the cost of the campaign, and you can readily see that becoming a member of the legislature means certain financial loss. This is the chief reason for the large turnover. The legislature can only attract those new to politics who want to use it for the purpose of getting acquainted."

A newspaper man who also saw service in both house and senate confirms this view. "Any one making a campaign in 3 counties both in spring and fall with the attending expenditures find a substantial monetary sacrifice considering the meager salary of $500 to $600 every 2 yrs., and it is difficult to interest a rich man to seek a small office like representative or state senator and it would be doubly difficult to elect one should one

[45] The 11 replies which failed to mention inadequate pay offered the following causes for failure to seek a second term: one mentioned the demands of his personal business and five listed candidacy for a different office (certainly closely related to the matter of compensation); one moved out of the district; two listed ill health or old age; one bowed before a rotating agreement; and one withdrew on account of his father's candidacy for state office.

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run. Therefore the matter of joint rep. and joint sen. are either young boys going up or old boys coming down the political ladder."

Most revealing of all is the testimony of a one-term senator who made no bid for renomination. "It was my experience that the $10.00 per day would not pay the expenses necessarily incurred. I felt that I owed and was duty bound to the people of my district to stay in a good hotel where I could be found and where I could be of some service to them. It was also necessary that I entertain, and it seemed that the people from my district made more demands on me in this respect than they have others who have represented the district in the senate. During the '27 and '29 session I happened to be a member of the most important committees in the senate and I worked diligently at the task before me. It necessitated an outlay for additional stenographic hire. We did not have an adequate stenographic force in the senate. The minority composed of 15 members in '27 and 12 in '29 had one stenographer assigned to it. It was not unusual for me to receive from 100 to 500 letters and communications each day when important matters were pending in the senate. I made it a practice to answer every communication that required an answer, whether it came from my district or elsewhere, and of course it made it necessary for me to furnish my own stenographic force part of the time. At the conclusion of my first term in the senate, I was convinced I had received as my [much] training in the legislature as I would obtain if I served another term. I also realized that from a financial standpoint that it entailed a loss of approximately $1,500.00 from my law practice each session of the legislature and in addition thereto a cash outlay, and I did not feel that I was in a financial situation to make such a sacrifice. . . . Frankly, I feel that the situation in this state would be improved by paying the members a salary adequate to compensate them for the loss of time and sufficient to permit them to live while in the session as well as they live at home. I believe this would result in obtaining higher type men in the legislature."

This testimony creates a powerful presumption that the failure of the people of Indiana to provide a more liberal scale of compensation is a prime cause of the unwillingness of Hoosier legislators to cumulate years of service. A more elaborate program of research than the writers have yet undertaken will be necessary to test conclusively the validity of this presumption.[46]

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[4] An act of 1925 provided that the pay of the Indiana General Assembly should be increased from $6 per diem to $10 per diem, effective January 1, 1929, but the

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appropriation act of 1927 made the $10 per diem available for the 1927 session. An analysis of the tendency of members to seek renomination since the institution of the direct primary (1918 to 1934) yields no conclusive proof that the increase in compensation had any substantial effect on willingness to continue service. The impact of the depression might, of course, have counteracted any effect of the pay increase. The following table shows the percentage of members of each session (whose terms expired) who sought renomination. No effort was made to differentiate occupational groups. Committee chairmen and Indianapolis members were isolated, however; neither varied particularly from the figures for all members.

Session	*Per Cent Seeking Renomination in Succeeding Election*	
	House	*Senate*
Before pay increase		
1917 session	42	28
1919 session	57	20
1921 session	48	28
1923 session	54	68
Pay increase enacted but not effective		
1925 session	66	64
Pay increase effective	69	48
1927 session		
1929 session	65	48
1931 session	62	68
1933 session	54	32

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The Profession of Public Service. In introducing the subject of this paper, it is held that we have failed, on the whole, to develop the public service as a well-recognized professional calling in this country, although it is not denied that preliminary steps toward this goal have been taken here and there, and particularly during the past few years. The position is probably tenable that more progress has been made in this direction in the last decade than in any preceding period since Jackson, not excepting the decade from 1883 to 1893 when civil service commissions were first installed. Jackson's famous statement: "The duties of all public officers are, or at least should be, made so plain and simple that men of intelligence may readily qualify themselves for their performance, and I cannot but believe that more is lost by the long continuance of men in office than is generally to be gained by their experience," has apparently been perennially accepted by the general public. This can be readily observed in our practice of easing great bodies of public employees both into and out of the service whenever a political turnover takes place, and this often despite civil service laws. Allowance should, of course, be made for those government jurisdictions which set up reasonably high entrance standards and give a measure of protection to those with a civil service status, but even in such jurisdictions the higher and more desirable positions are ordinarily reserved for birds of passage, whose movements are largely determined by the air currents that prevail in the political atmosphere.

A second characteristic is the relatively low regard in which the public service is traditionally held by the public at large. In support of this assertion, one may cite statements made by two United States senators, both significant because of being typical. In 1920, one of them was questioned as to whether his son was still in the Treasury Department. He had been employed there during the War. The Senator's reply was that "the public service is no place for a bright young man." A year or two ago, a senator from an Eastern state told of the following experience with a roommate of his son who was studying in a prominent private school for boys. The roommate asked the Senator what his business was and later, when the father expressed surprise that the son had not told his roommate of his occupation, the boy explained his reticence as due to the fact that "that sort of thing doesn't stand very well around here."

More substantial evidence has been brought together in the surveys made by Leonard D. White at Chicago on the prestige of the public service. He investigated the attitudes of a number of Chicago men and women representative of various classes of society. Many are familiar with Mr. White's findings, which went to show that from the point of view of a number of desirable qualities and behaviors, private employment was

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rated higher than public employment by the majority of those interviewed.

It is true that in the past three or four years, promising young men and women, and some older ones, have been glad enough to accept appointment under a government in the absence of other occupational opportunities. Furthermore, relatively few people have failed to relinquish somewhat their traditional viewpoint that government is a necessary evil, since the government has come to the aid of such broad strata of our population in a very substantial way. Moreover, related to this realization of the importance of public functions, there is a growing appreciation of the need for recruiting men and women of broad ability and real promise into the service. The term "career service" has been coined and, through the activities of the Commission of Inquiry on Public Service Personnel and the League of Women Voters, has gained a currency which gives much promise of a new chapter in the civil service story of this country. With the changed attitude of the public, and with the improved quality of personnel, it may well be that the United States will take its place alongside the other progressive nations of the world in which public servants have long enjoyed social standing of a high order.

Perhaps the most hopeful sign of this development is the attention given to the recruitment and training of promising young people for administration itself. Leadership in this movement has been assumed by the United States Civil Service Commission under the stimulus of Leonard D. White. Up and down the land, colleges and universities are working out curricula looking toward this end. The most striking recent development is the announcement of special training courses at the Littauer School at Harvard. If the movement goes forward unimpeded by political interference and bears the fruit that one may reasonably anticipate, not alone will there ultimately be an improvement in the management of government, but career administrators can by virtue of their positions provide the necessary leadership for the growth of a professional consciousness which has been so lacking in many areas, and which must be present in the minds of the great body of civil servants before a worthy profession can emerge.

With these introductory remarks, we may turn to a consideration of those characteristics and factors which are required in any profession. The key factors may be summarized in the following way: (1) a common body of knowledge, of techniques and skills; (2) an *esprit de corps* (corporate spirit); (3) a code of professional ethics; and (4) as a part of this code, the adoption of the attitude of impartiality, requiring that all members of the public be served without fear or favor. These various points will now be enlarged upon with some reference to present-day conditions.

A Common Body of Knowledge. A profession is like a trade in that its

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members must have acquired certain skills that set them apart from the so-called laymen. On the whole, the easier it is to qualify for a calling, the more difficult it is to develop a professional sense and pride. For some years, the City Managers' Association has been seeking to develop and standardize the professional status of its members, but, with the continued influx of politically qualified, as opposed to the technically qualified, managers into the ranks of this calling, it has been impossible to erect entrance bars that could not easily be hurdled. This has proved a serious handicap to the development of a professional status.

It is a matter of common knowledge that the recognized professions have relatively high requirements for training, which is usually supplemented by an apprenticeship or interneship. Reference may be made to the medical, the engineering, and the legal professions. Entrance into these is conditioned by the holding of degrees from recognized institutions, and in some of them full status is granted only after a number of years of service in the practice of the calling.

On account of the great variety of subordinate positions in government for which most meagre schooling and other requirements are set up, it is not easy to meet what is considered the first condition of an exclusive calling. This handicap might be overcome by prescribing a certain number of years of satisfactory service before acceptance into full standing in the profession of public service. Such a period would correspond to the apprenticeship period, so commonly encountered in various crafts. Attention is directed at this point to the general lack of anything approaching the apprenticeship idea in governmental callings in this country. This contrasts with the systems found in foreign countries, where, for certain classes, the apprenticeship may cover from one to three years.

Even the probationary period, restricted as it is from the point of view of time, might partially serve as a bar or hurdle for professional standing; but, as is well known, probation is a trying out only in name. If there ever was a dead letter law or regulation, it is the one prescribing a period of probation for new appointees to public positions.

Making due allowance for exceptional jurisdictions and exceptional positions, it may be concluded, in general, that entrance into the service is made easy, that probation and apprenticeship programs are notable for their absence, that training is widely ignored, that promotional policies are applied in a haphazard manner, and, topping it all, that many chief executives and their assistants who are in positions to correct such shortcomings are themselves not properly qualified for their responsibilities. Under such circumstances, no great amount of insight is required to understand the difficulties of developing a policy of exclusiveness which is derived from common knowledge and skills, and which is one of the essential characteristics of a profession.

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Esprit de Corps. The second factor is the presence of a corporate spirit, an *esprit de corps*. For the best development of this spirit, organization of some sort is practically mandatory, but the organization of public employees with us has proceeded only slowly and in a very spotty way. This applies particularly to the professional and supervisory classes of officials, the natural leaders, who have been inclined to fight shy of organizing, perhaps because it smacks too much of trade unionism, at which most of us have been inclined, until recently, to look askance. Now that the Supreme Court has blessed the Wagner Act, it may be that the oncoming generation will no longer be schooled to consider with suspicion the organization of the employed, whether private or public.

Some years ago, the absence of organization and the advantages of organization were brought home to the writer in connection with a plan launched by a prominent federal administrator for bringing together top men in the administration at Washington. President Roosevelt was at that time assistant secretary of the Navy. He took upon himself the sponsorship of this movement and set the ball rolling. In introducing the proposal for the organization of a so-called Federal Club, he addressed some 250 to 300 men, calling attention to the fact that although they were the brains of the administration of the government, they enjoyed no recognized standing in the community, they did not know one another to any considerable extent, and they exercised no concerted influence. For a period of time, the Federal Club flourished and made itself count in a very real way in federal affairs. For example, its committee analyzed and criticized the Reclassification Act and made constructive suggestions such as no other officials might have made, and by virtue of the character of the men involved, secured a hearing such as no other group could have secured.

Within comparatively recent times, the leagues of municipalities have been bringing together municipal officials engaged in like occupations and, either in general meetings or in special training sections, have given them opportunities to interchange ideas and, under the leadership of outstanding specialists, have given them new ideas to reflect upon. In some cases, officials with like responsibilities have organized independently and have gained a sense of professional consciousness that has contributed materially to their *esprit de corps*.

Of equal, if not greater, importance is the establishment of national organizations of city managers, municipal finance officials, civil service officials, chiefs of police, and other groups. These national organizations maintain their own secretariats, which carry on a certain amount of research work and publish independent organs. As a consequence, new standards are emerging, knowledge of the best procedures is being disseminated, and generally the class-consciousness—to use the term in its

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broad significance—of those identified with these associations is taking form.

In the state area, the Council of State Governments has also been active in the stimulation of the organization of certain state employees on the basis of callings. It is probable that this agency will carry on some such program for state officials on a national basis as have the associations of municipal officials whose offices are centralized in Chicago. In this category is also to be listed the Institute of Government, held now for six or eight years at Los Angeles under the auspices of the University of Southern California. Here are gathered each year from the four corners of the state many specialists in rather narrow fields. But they find that specialties impinge on one another and that the specialists themselves have a whole gamut of problems which call for mutual understanding and a coöperative attack. A real cross-fertilization of ideas is under way, and meanwhile it is found that whatever special interests may be represented, all have something in common. No observer will doubt that this unique Institute of Government is a real builder of *esprit de corps* in the public service of the areas represented. Such a spirit is a by-product of the whole enterprise, but perhaps as important as the product itself, which, in the terms of the program, is a solution of a number of more or less specific problems.

By way of an aside, may not the question be raised: With what group of men and women engaged in a common enterprise should it be easier to develop an *esprit de corps* than among those who are engaged in serving the public? The ultimate binder cannot be pecuniary rewards and personal profits as it is in all private enterprise, if for no other reason than that public employees, like the monks of old, are called upon to subscribe to the vow of poverty. They not only may, but they must, find a considerable part of their compensation in the satisfactions of their jobs. Under proper leadership, there is no known group of workers whose loyalty and *esprit de corps* can so easily be stimulated.

I recall some years ago when Will Hays as Postmaster-General laid the ground-work of a service program through the organization of the Human Relations Department, as he called it. By this means he put heart into the three hundred thousand workers in the Post Office Department. In his enthusiasm, he concluded that by bringing home to his staff the worth-whileness of their work and arousing in them some sense of partnership in a great enterprise, he had added the equivalent of fifty thousand workers to the force of the Department. There was probably not a humble letter-carrier in the United States who did not get a new spring in his step because of this program.

Several years ago I had occasion to see at first hand something of the *esprit de corps* of the American Telephone and Telegraph workers, and

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of those on the payrolls of the General Electric and the Goodyear Tire and Rubber Companies, and could not help envying for the public service something of their enthusiasm and loyalty. There is no reason to doubt that, under proper leadership and stimulus, as much or more enthusiasm and loyalty might be engendered in the public service; for here there need be no suspicion that those responsible for such a movement may personally profit in a material way from the greater efficiency that will flow from a new spirit. Loyalty to the service and loyalty to one's fellows are, I would conclude, much easier to engender where the pecuniary motive does not enter in. Standards of loyalty are one of the best earmarks of a worth-while *esprit de corps*.

In closing this section, I would refer to a development that might well flow from the activities of organizations to which I have just referred. There is bound to result, not alone from the rubbing of shoulders of people of like interests, but from the consideration of thoughtful papers and the informal interchange of ideas, a deeper and more conscious comprehension of the common task and a sharper definition of the philosophy that underlies and comprehends government service. For years I have envied the British their Institute of Public Administration and the Germans their national associations of public officials, and no less the publications of their proceedings, which deal not alone with practical problems but also with the broad philosophy of their callings and the relationships of the latter to national life. In view of recent developments in this country, there is reason to hope that we may sometime have a body which will compare with those just mentioned and will have an organ of opinion that will find its place on the shelves of the leading public administrators of the world. I cannot stress too much the value of a broad philosophy of the public service as a means of building up an *esprit de corps*.

Another function of organizations is the development of constructive programs of reform for the public service. The activities of the American Tax Association may serve to illustrate what I here have in mind. There is every reason to expect that serious-minded and devoted public servants who are banded together on the basis of common interest in one or more important functions of government should be the source of constructive ideas and should be consulted on major issues arising in connection with their special fields. According to Leonard D. White, some of the civil servant organizations in England have become unofficial "instruments of administration."

One special phase of administration that might well enlist the attention of those officially engaged in government is the development of an administrative code for public personnel in which the rights and duties of civil servants should be definitely formulated and procedures prescribed for the defense of public employees in their rights and for penalties in the

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case of violation of their duties. This would, of course, call for the establishment of official reviewing agencies so constituted that their authority and competency would be generally recognized. Although those sponsoring such a program might lay themselves open to the charge of self-interest, it is the writer's conviction that this plan is fully justifiable in the name of public interest.

A further function is the defense of the members of an organization against attack from other special interest groups, from the press, and from the political fraternity. I recall that some years ago, when the question of a standardized and up-to-date salary scale was being debated in Congress, Senator Reed Smoot of Utah seemed to take peculiar pleasure in denouncing the federal employees as tax-eaters, leave-takers, and clock-watchers. That there were such in the federal service at the time, and are such at present, may probably be taken for granted, but Smoot's scathing and sweeping generalizations could, I believe, not be supported by proof. It is entirely suitable that organizations, through proper publicity, should come to their own defense and assume the task of informing the public as to the justice or injustice of attacks on the service to which their lives are devoted.

Code of Ethics. The third major characteristic in my series is the adoption of a code of ethics. There is no characteristic of a profession about which there is more likely to be universal agreement than this—that principles and ideals take precedence over pecuniary gain and personal advantage. Some years ago, Professor Heermance of Yale made an analysis of all codes of ethics extant at the time for business organizations. In practically all cases, the idea of service to the public was emphasized and loyalty to standards given a prominent place. How seriously these mandates of business codes were taken, I do not need to say, but they surely will have a leading place in the codes of ethics of groups of public servants. Perhaps one of the best illustrations of the acceptance of principles and ideals as taking precedence over personal advantage and convenience is to be found in the life of the old-fashioned general practitioner of medicine whose code forces him out in the middle of a stormy night to give assistance to whomsoever calls, whether rich or poor. There are numerous public servants who accept the dictates of their code with the same unquestioning and selfless devotion.

Although each member of the profession is the keeper of the code, its long-run maintenance occasionally calls for disciplinary measures which should be judicially applied by a properly constituted body acting under prescribed procedures against those who violate it. Just as lawyers are disbarred for certain well-recognized offenses and according to standard procedures, so should violators of the public service code be disbarred for behavior not becoming the profession.

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It must be apparent that such a policy calls for an established code and definitely prescribed methods for upholding and enforcing it. Almost no attention has been devoted to this matter. The attempt to do for the public service what Professor Heermance did for business would, I judge, result in a very thin and sparse volume. Offhand, I think only of the codes of ethics of teachers and city managers. The latter was prepared by the City Manager's Association some years ago. I am sure that careful investigation would show that various public servant groups have their codes of ethics, but that they have never been formulated and reduced to writing. I would suggest that it would be a wholesome procedure for any association of public officials to give careful thought to the formulation of a code suited to the peculiarities of the association and its membership. This would go far toward stimulating a professional *esprit de corps*.

The central and dominating theme of any professional code for civil servants will be the public interest. In all the procedural complications of government service and under the stresses and strains of conflicting pressure groups and of individuals seeking preferential treatment, the guiding star of the professionally-minded civil servant will be the public interest. This theme will be reflected in each of the articles constituting the code. It will be the touchstone for testing the behaviors of those living under it, whether in inter-official or official-public relationships.

In a going democracy, the latter cannot be over-stressed. Keeping the channels open between the public servant and the public served is the surest safeguard against evils of bureaucracy and the menace of fascism. Public administrators are prone to forget that the exercise of discretion, the formulation and enforcement of rules, regulations, and even the laws themselves, are a means to an end—the satisfaction of the public's desires. Efficiency we must have and regularity we must have, but neither of these, nor both of them together, can serve as a substitute for the end-goal of democratic government—the service of the public. Official-public relationships cannot fail, therefore, to merit the attention of the code-drafters of the future.

Under a satisfactory code, emphasis will be placed also upon the matter of personal integrity. Like Caesar's wife, the civil servant must be in all respects "above suspicion." This was brought to the attention of the public a short time ago when President Roosevelt expressed his belief that speculative activities on the part of federal employees should be banned. It is taken for granted that, even in their private dealings, public servants should maintain higher standards than their confreres in private life. The British expect of their public officials what Leonard D. White has called a fastidious sense of the fitness of things, a nicety and jealousy of their honor that go well beyond current conventions and social rules. Again we are reminded that by virtue of his calling, the public employee

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represents a special class which carries with it its own *noblesse oblige*.

Impartiality. An integral part of a code of ethics is the requirement that public servants must be devoted to the services of the *whole* public, performing their tasks impartially and without fear or favor. This topic is treated separate and apart from the preceding because of its expanding significance in an era when more and more discretion is vested in public officials, and perhaps too because of the frequency with which it is violated. There is, in my opinion, no greater monument to the tolerant and long-suffering spirit of the American people than its willingness to put up with a partisan administration of the law in a democratic country. There is probably no one now employed in a governmental position who has not many times found himself under obligation, or under temptation, to grant favors to members of the dominant party or of the oligarchy of rich and influential families in the constituency in which he is employed. I believe that no tendency in American government has contributed more to the widespread distrust of government than is associated with this abuse. What is more, there is nothing more destructive of morale in an individual or of a group than this—that the public official should fail to perform his bounden duty because of some real or assumed pressure from influential quarters.

Enforcing law or dispensing justice with an "uneven" hand undermines at one and the same time one's self-respect and his pride in office, and ultimately may undermine the democratic government itself. I need only mention the abuse in connection with automobile regulations for violation of parking and speeding ordinances, the favoritism practiced in many an assessor's office, the partisan enforcement of election laws on the part of inspectors, the subterranean influences that are likely to flow into the prosecuting attorney's office, even into the very chambers of the court. Reference might also be made to the way in which we tolerate active partisan participation in primaries and in elections by public employees. I have seen city halls practically deserted on election day because the public servants had been called upon to become party workers. Could anything be more incongruous than that those whose salaries are paid by Democrats and Republicans alike should neglect their public duty and devote their time—which is the public's time—to advancing the interests of one or the other party? Related to this is the custom found in many places whereby money assessments are levied against the wages and salaries of public servants by the party in power. Organized public servants should come to grips with practices of this sort on the ground that they are incompatible with the mandate of impartiality, a primary mandate to those engaged in public callings. It would take but little publicity to ban such practices to the realm of forgotten things.

We might well take a leaf out of the book of the civil servants in Great

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Britain, whose impartiality, whether serving under a Labor or a Conservative government, is simply accepted as a matter of course. Sidney Webb, who was a member of the first Labor government in England in 1923, has paid a glowing tribute to the "loyalty, fidelity, and zeal" of the civil service. Although the permanent staff was called upon to modify sharply the general course of the British ship of state, and perhaps contrary to its own convictions, its members advised their new masters with the same resourcefulness and devotion as they had the cabinet of the former government. When may we expect adoption of the policy of neutrality and impartiality as a matter of course among the whole rank and file of our civil service?

Conclusion. In conclusion, I would refer to the growing significance of public callings in this changing world. The traditional assumption in this country is that government employees are not productive and that government and all of its works are a necessary evil. This position should be challenged in season and out in the organs of associations of public workers as well as by their spokesmen. I am reminded of a report of what happened in the city of Berlin in 1919 when all of the city employees went on a strike. It is recorded that within the space of three weeks the city was on the verge of chaos, of brigandage, of epidemics, of destruction by fire. There was a dearth of water in certain parts of the city. At night, parts were in darkness. In a word, the withdrawal of the city services might be likened to the withdrawal of the skeleton framework of the human body. It threatens a collapse of the whole structure.

When one considers the extent to which, even in this country dominated by the inherited belief that the least governed country is the best, government has been charged with broader and broader responsibilities, the analogy to the skeleton and the body is more and more true, not alone within the municipal sphere but as to state and federal governments themselves. It has been amply demonstrated that the untrammeled seeking of personal profit in a so-called competitive system does not result in the public weal, as was assumed by Adam Smith and his successors. Whether this might eventuate over, not decades, but centuries of time, we shall never know, because through the will of the people the government has now definitely undertaken to advance the public weal directly, even in the economic sphere, under powers delegated to it and with the resources of the nation at its disposal. I hardly need to suggest that we find ourselves today in a period of great social change. Great forces are in conflict. The course that we are to follow is uncertain, but New Deal or no New Deal, the directing and controlling agency of this social change is the government. It is my belief that no administration, however conservative it may be, will be able to abrogate this fact.

It is this challenge that public employees may well bear in mind. They

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find themselves today aligned at the forefront of a changing society. The governments with which they are associated are the primary instruments making for order and orderliness in the progress of this change. Whatever our theorists may say, the government and the administration and enforcement of its laws are the men and women who are carrying on governmental functions. No law can make them abler or better than they are at any given time. Upon their devotion to the public cause, upon their intelligence, and, I would stress, upon their *creative* intelligence, will depend the smoothness and success and soundness of this movement. When one says that society is in a crisis, one says that government is in a crisis. Our civil servants will be tested as has no other generation of public employees. In view of the critical importance of the calling with which they are identified, there is more reason today than ever before for them to become professionally conscious, for them to develop professional standards, and to contribute to the prestige of the public service through the up-building of their personal prestige and that of those with whom they are associated.

WILLIAM E. MOSHER.

Syracuse University.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

By vote of the Executive Council, the next annual meeting of the American Political Science Association will be held at Columbus, Ohio, Wednesday to Friday, December 28–30, 1938, with headquarters at the Deshler-Wallick Hotel. Local arrangements will be in charge of a committee under the chairmanship of Professor Harvey Walker, of Ohio State University. President Clarence A. Dykstra has appointed other committees as follows: (1) on program, Clarence A. Berdahl (chairman), University of Illinois; Herbert W. Briggs, Cornell University; Francis W. Coker, Yale University; D. F. Fleming, Vanderbilt University; and Leonard D. White, University of Chicago; (2) on nominations, Arthur N. Holcombe (chairman), Harvard University; Isidor Loeb, Washington University; Finla G. Crawford, Syracuse University; H. C. Nixon, Tulane University; and Miss Edith Bramhall, Colorado College.

Professor Carl J. Friedrich, of Harvard University, is spending the spring months in research in France, Switzerland, Austria, and Czechoslovakia.

Professor Harold J. Laski, of the London School of Economics and Political Science, has accepted an invitation from the University of Washington to serve, on the Walker-Ames Foundation, as professor of political science at the University during the winter term of 1938–39.

While remaining on the staff of research consultants of the National Resources Committee, Professor Harold F. Gosnell has resumed his teaching duties at the University of Chicago.

Professor H. C. Nixon, of Tulane University, is on leave of absence during the second semester and is occupying a temporary post with the Office of Education at Washington, D. C.

Professor Johannes Mattern, of the Johns Hopkins University, is serving as visiting professor of political science at Tulane University during the second half of the academic year.

Dr. David Fellman, of the University of Nebraska, will teach at the University of Missouri during the coming summer session.

Professor Pressly S. Sikes is on leave from Indiana University during the second semester while supervising a research project on taxation for the state government.

Professor Roger V. Shumate, of the University of Nebraska, has been made director of research for the Nebraska Legislative Council.

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Professor Charles M. Kneier, of the University of Illinois, has accepted the post of director of research for the recently established Illinois Legislative Council. Having been granted a year's leave of absence from the University, he will assume his new duties at Springfield on June 1.

Mr. Lewis B. Sims, associate examiner in political science, U. S. Civil Service Commission, has been granted an extension of leave in order to continue his work during the second semester as resident consultant in the Graduate School of Public Administration at Harvard University.

As a memorial to the late Dr. Carleton, who was a member of the political science department from 1933 until his death in 1937, Louisiana State University has established a Roderick Lewis Carleton fellowship in government, with an annual stipend of $450.

During the second week in January, Miss Ethel Foster, a retired civil servant with many years of experience in the administration of social insurance in Great Britain, delivered a series of lectures at the University of Illinois on the British civil service and health and unemployment insurance.

Mr. Henry A. Ritgerod, formerly a graduate assistant in political science at the University of Missouri and more recently associated with the Missouri State Planning Board, has become chief of the bureau of municipal research at the University of Arkansas and research consultant of the Arkansas Municipal League.

At Western Reserve University, Dr. Wilbur W. White has been advanced to the rank of assistant professor; Dr. Christian L. Larsen, of the University of California, has been appointed instructor in municipal government; and Mr. Donald E. Strong, of the University of Chicago, has replaced Professor Dennis D. Brane, who resigned last autumn to become dean of Otterbein College.

The University of New Hampshire will hold, beginning July 15, its first Institute of Public Affairs. The subjects for discussion will be various state and local matters of pressing concern.

The First Pan-American Congress of Municipalities, tentatively scheduled to be held in Havana, Cuba, April 14–23, 1938, has been postponed to November 7–12.

The faculty of law of the University of Leiden offers prizes aggregating 5,000 Dutch guilders for the best essays submitted to the dean of the faculty before March 1, 1940, on the subject of the existing bilateral treaties concerning the force of civil judgments.

The forty-second annual meeting of the American Academy of Political and Social Science, held at Philadelphia on April 1–2, was devoted to

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the general subject of "World Tensions," with sessions devoted to the doctrine of self-sufficiency, trade barriers and their consequences, the "haves" and "have-nots," population pressure, propaganda, and the position of the United States.

The fourteenth Harris Foundation Institute will be held at the University of Chicago from August 1 to 20, with "The Crisis of Democracy" as its central theme. The leader, Professor William E. Rappard, of the University of Geneva and director of the Graduate Institute of International Studies, will give six public lectures, and there will be regular round tables and discussion sessions throughout the period.

A Summer Institute for Social Progress, to be held at Wellesley College, July 9–23, will be devoted to the general question, "What Part Can a Citizen of the United States Play in the World Situation?" The Institute will be under the general direction of Dr. John S. Burgess and will embrace both formal lectures and informal round tables. Among those who will participate are Professors Frederick S. Dunn, of Yale University, and Carl J. Friedrich, of Harvard University.

On invitation of the Mexican government and the authorities of Mexico City, the International Federation for Housing and Town Planning is arranging to hold an International Congress of Housing and Town Planning in Mexico City, August 13–20, 1938, followed by a study tour of some of the most important developments in Mexico. It is proposed also to arrange after the Congress, with the coöperation of interested organizations in the United States, one or two visits and local meetings at important cities on the return of the delegates to New York.

Under the directorship of Professor Cullen B. Gosnell, of Emory University, the eleventh annual session of the Institute of Citizenship was held at Atlanta, February 14–17. Lecturers included Mr. Arthur E. Morgan, of the T.V.A., Professor Howard W. Odum, of the University of North Carolina, and Professor William F. Ogburn, of the University of Chicago.

The thirty-second annual meeting of the American Society of International Law will be held in Washington April 28–30. The presidential address will be delivered by Dr. James Brown Scott, and papers to be presented include: "The Nature, Place, and Function of International Law Today," Professor Norman A. MacKenzie, University of Toronto; "The Theory of International Law," Professor Josef L. Kunz, University of Toledo; "International Law of Copyright," Dr. Wallace M. McClure, Department of State; "International Radio Law," Dr. Irvin Stewart, formerly of the Federal Communications Commission; "International Law of the Air," Mr. Howard S. LeRoy, New York City, and Professor

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Philip C. Jessup, Columbia University; "War: Declared and Undeclared," Professor George Grafton Wilson, Harvard University; and "Responsibility for Damages to Persons and Property of Aliens in Undeclared War," Professor Clyde Eagleton, New York University.

At the University of Pennsylvania, an Institute of Local and State Government was established early last year by means of an anonymous contribution of $240,000 to the University's Bicentennial Foundation and has as one of its objectives "the setting up of facilities for academic training of persons interested in government as a career." In pursuance of the Institute's program, fourteen junior and senior students were selected in February to study state and local government through first-hand contact with various administrations of the state of Pennsylvania, the city of Philadelphia, and other communities. The students will devote a minimum of fifty hours a month to the work, receiving some financial compensation from the Institute. Their work will be under the supervision of the Institute, and they will meet each week for a three-hour seminar to exchange experiences and ideas, hear special lectures, and make reports. It is believed that the pre-service training thus provided for will be different from that at present given in connection with any other American university.

Professor William A. Schaper received his doctor's degree at Columbia University in 1901, became assistant professor of political science at the University of Minnesota in 1901, and in 1904 was appointed professor in the department. When the department separated from the department of economics in 1913, he became its chairman. Following the entrance of the United States into the World War, Dr. Schaper, in September, 1917, was dismissed from the University faculty on charges of disloyalty. There was no notice, no filing of charges, and he was not confronted with witnesses. Following his dismissal, he engaged in various business enterprises. In 1925, he returned to academic life as professor of economics in the school of business of the University of Oklahoma. In December, 1937, Governor Elmer A. Benson of Minnesota recommended to the Regents of the University of Minnesota that the action of 1917 involving Professor Schaper be rescinded and that his dismissal be expunged from the records. The Board of Regents at the time included only two men who were members when the dismissal took place. On January 28, 1938, the Board of Regents, by a vote of eight to one, rescinded the action of 1917, restored Professor Schaper to the position of professor emeritus of political science in the University, and voted to reimburse him to the extent of $5,000 to cover his salary for the year 1917–18. At the same time, the Regents adopted a strong resolution concerning academic freedom and tenure.

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Authority and the Individual. Harvard Tercentenary Publications. (Cambridge: Harvard University Press. 1937. Pp. vii, 371. $3.00.)

This collection of sixteen papers represents the contributions of scholars, chiefly in the field of the social sciences, who were invited to participate in the Harvard Tercentenary Conference. Although the papers are not all of equal merit, they reflect in the main a sincere attempt on the part of the writers to achieve the purposes of the conference. That is to say, the social sciences are brought by the several scholars, each from the standpoint of his own special experience, with his own characteristic way of thought and his own method of study, to contribute to a common understanding of the vast problems of human behavior. When linked with the work of men in the other fields of science and learning, the conventional academic disciplines are cut across and the interactions among the departments of knowledge are revealed. The result is not simply a refutation of the charge of excessive specialization which is flung at the scholarly world of our own day; it is a convincing demonstration of the essential unity of all human knowledge.

The most successful papers within this volume are those which are confined severely to the elucidation of a single idea. One of the authors has remarked that "short papers on great subjects read at conferences must contain many *obiter dicta.*" But a dictum from Professor Andrews that the American colonists did not cease to think of themselves as Englishmen until well into the eighteenth century illuminates the whole background of the history of the United States. Professor Corwin, by pointing out that the Constitution of the United States as an instrument of popular government has given rise to a constitutional symbolism which negatives in large measure the aims of its framers, fixes the setting within which constitutional controversy today flourishes. His conclusion that the way out of the dilemma, short of formal constitutional change, is through the enlargement by the Supreme Court of some of its conceptions is prophetic of what that tribunal has since done. Finally, Professor Jaeger traces the influence of the problem of authority and individual liberty upon the intellectual development of Greece. The crisis of the Greek spirit which came in the fifth century is the central theme. Although Professor Jaeger describes a characteristically Greek situation, his conclusion is valid for every age. These three papers not only are splendid contributions from the point of view of modern scholarship, but they also achieve most nearly the objectives sought by the Harvard Tercentenary Conference.

Among the other papers, the essay of Professor Mitchell on "Intelligence and the Guidance of Economic Evolution" calls upon planning to

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enlarge the scope of its activities at the precise moment when this service function is breaking down under the burden of tasks already entrusted to it. It seems strange that among all the enthusiasts within the planning movement few have given thought to the reconciliation of the planning process with the fundamental principles of democracy. The net result has been to align planning with the authoritarian forms of government. In a brief paper entitled "Conservative Factors in Recent British History," Professor Clapham discovers a number of historical factors which favor a conservative economic and social evolution in Britain—provided that country enjoys international security. This is an important proviso. If security were guaranteed, conservatism and reaction might become the dominant politics in any country. The more important question is how Britain is to gain security. Perhaps this is a topic which a British scholar would not care to discuss in the United States.

The publication of this and the companion volumes of the anniversary conferences places the world of scholarship in debt to Harvard University. If the discharge of the debt is undertaken through renewed efforts to bring together the diverse parts of the whole field of human knowledge, the Harvard Tercentenary will have accomplished much in behalf of intellectual advancement.

WILLIAM S. CARPENTER.

Princeton University.

Die Ständische Ordnung; Geschichte, Idee, und Neuaufbau. By WALTER ADOLF JÖHR. (Leipzig: Felix Meiner Verlag. 1937. Pp. 361.)

A book on the theory and history of the corporative state seems quite opportune at the present time when a number of countries are attempting to reorganize themselves on a corporative basis.

The author of this volume, a young Swiss who recently published a little book on *America and Fascism*, is, like many contemporaries, dissatisfied with the picture that modern society presents. He decries particularly the social isolation into which the rationalistic and equalitarian tenets of Liberalism and Marxism have thrown the individual, as also the disunity and ineffectiveness in coping with diverse economic interests shown by the "democratic party state." His main quest, therefore, is for the principles of a social order which would provide a firm and secure status to the individual and likewise strength to the state. Since history, in his opinion, has revealed that neither privilege (of birth or wealth) nor equality are adequate foundations of a social order, Jöhr looks to "the great social functions" as the pillars on which alone a stable society can be erected. His proffered solution for the ills of modern society, therefore, is corporatism—an order of society "characterized by the fact

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that the entire social life is directed toward the fulfilment of the needs of the commonwealth transcendentally rooted" (pp. 2, 177).

Constituent parts of that order are the corporations (*Stände*), i.e., associations of all individuals permanently engaged in the loyal discharge of one particular function in the interest of the commonwealth; they may be either *Sachstände* or *Berufsstände*, depending upon whether they embrace a broad function or only a trade or profession, respectively (p. 206). In addition to being functional associations charged with definite economic tasks, the corporations are also intended to be spiritual entities in the hierarchical corporative structure, moulding the general pattern of life in the commonwealth as well as assigning each member a definite status in it as to rank, honor, privileges, style of life, etc., based on the belief that men are unequal by nature.

Ideas of this kind are not original with the present author. In the historical part of his book, he shows that corporative elements were contained in the political doctrines of Plato and Thomas Aquinas, for example, and existed in political actuality during the Middle Ages. After the destruction of the corporative constitutions by the French Revolution and the ascendancy of political and economic Liberalism, the corporative doctrine experienced a revival in the writings of the German classical and romantic schools (Hegel, Adam Müller), and more recently in the schemes advanced by Othmar Spann and by the Catholic Church (*Quadragesimo anno*), respectively, both of which Jöhr finds inadequate.

Several chapters of the book describe the functioning of the corporations in the economic field, both theoretically and based on German and Italian developments. Although a corporative parliament is to take the place of the former legislature composed of parties, political functions are, in Jöhr's scheme, withheld from the corporations in their aggregate. Rather, those tasks are to belong to the domain of one particular corporation, viz., the party, whose main responsibility is the maintenance of, and leadership in, the state (pp. 131 ff.).

It is the author's opinion that the corporations must not be solely organs of the totalitarian state (p. 238), but should possess autonomy in intracorporative and intercorporative matters (pp. 312 ff.). At this point one would have welcomed a more thorough examination, in lieu of a few brief, cautious words of doubt (p. 159), of the possibility of two such mutually exclusive doctrines as corporative self-rule and authoritarian centralism. In general, the author leaves the impression that the experiment as hitherto developed in Germany contains elements of genuine corporatism, which he thinks much less true of Italy.

The road to the materialization of a corporative society is being prepared, as Jöhr sees it, by the steady decline of "free" economy and the growing anti-capitalist and anti-democratic sentiments. The final action

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will have to be taken by the state (p. 277), led by an élite acting with self-appointed authority.

The thesis of the treatise appears conclusive, once its basic premises are granted. Some disputable statements in an otherwise well-balanced book (which was submitted as a doctoral dissertation in Berlin) seem somewhat influenced by certain official opinions held in Germany (e.g., p. 129, on parties). A selected bibliography precedes each chapter, whereas an index unfortunately is missing.

GERHARD KREBS.

University of California.

The Origins of the Foreign Policy of Woodrow Wilson. By HARLEY NOTTER. (Baltimore: The Johns Hopkins Press. 1937. Pp. vi, 695. $4.50.)

The main thesis of this book, as stated in the introductory note, is that "all the essential elements of thought governing Woodrow Wilson's foreign policy were determined, and in several instances specific policies were formulated, before he took the oath of office as President of the United States." The author, who has been the assistant of Mr. Ray Stannard Baker in the preparation of the authorized biography of Wilson, has based his study in part upon the writings of Wilson, published and unpublished, but, going farther, has ranged through available primary and secondary source material. The result is a sizeable volume in two parts. The first (pp. 3–217) presents the ideas, doctrines, and principles, conceived or expressed, formulated by Wilson prior to his accession to the presidency; the second (pp. 221–654) undertakes to find in word or action the application of these ideas, doctrines, and principles during Wilson's presidency as the unexpected continued to happen. The author's conclusion is that "certain fundamental elements of thought which marked Wilson's foreign policy had been determined . . . before he entered the White House as President (p. 654)." Three elements, we are told, dominated his policy: morality, progress, and socio-religious philosophy. To these the author adds democracy, and the objective of the United States toward world peace. It is not claimed that these were the peculiar possessions of Wilson, but rather that the combination in one man was unusual if not unique. To the reader, the first rather than the second part of the work may be found the more intriguing; for therein lies the real heart of the author's thesis.

Wilson's "socio-religious philosophy" may be accepted as a constant factor in his life. Keynes recognized it as fundamental even to the point of satire. The pre-presidential period, down to his resignation of the Princeton presidency, may be considered from four points of view: the lawyer, the scholar, the literary man, and the administrator. Until Wilson became a university president, it would appear that his prime ambition

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was to be a literary man. His interest in law as a profession may be measured by his lack of success in it. Abandoning the law after a few months, his aim was to "write for publication." An interest in history and political science, begun at Princeton, led him to the Johns Hopkins University to study under H. B. Adams and R. T. Ely. The fruit of this experience was not merely the acquisition of a Ph.D. (1886), but the writing of *Congressional Government* (1885), accepted as a doctoral thesis. What distinguished the Johns Hopkins from the graduate schools of these days was its atmosphere of complete intellectual freedom, *lernfreiheit* in its entirety. Wilson was no doubt studious, but he was cultivating his style, and *Congressional Government* showed it. Other Americans had contrasted the American system with the British, but to the disadvantage of the latter. Like Rousseau, Wilson took the opposite tack and a brilliant literary essay was the result. What to the student of political science seems incredible, in the preparation of his work Wilson never went to Washington to observe at first hand that congressional government which he criticized. He never visited England until 1896, or the Continent of Europe until 1903. Teaching history and political science from 1886 until 1902, he confessed in that year, "I am first of all a writer and not first of all an educator." What had he written? Following *Congressional Government* (1885), he published *The State* (1889), a pioneer textbook in comparative government competing with Burgess, his *Division and Reunion* (1893), an excellent textbook, and his *History of the American People* (1896), in which he sought, without signal success, to do for the United States what Green had done for England. One does not look for novel ideas in textbooks. Not until his *Constitutional Government in the United States* (1908) did Wilson make his great original and lasting contribution to the literature of American government—a preview of the presidency which is a work of genius. Many other writings came from his pen, but they were for the most part essays and addresses. In them one sees Wilson's style, a style which he had based upon three B's (Burke, Bagehot, and Birrell) graceful rather than profound, stylistic rather than original. Wilson's essay on *Sovereignty* (1893) is amateurish compared with John Dewey's essay with the same title published at about the same time. The reviewer listened with satisfaction and delight to Wilson's lectures on administration at the Johns Hopkins. He never expressed himself carelessly. The style was Wilson's, but the ideas were those of Aucoq and von Sarwei.

From all this, what conclusion? This, that Wilson's interest in politics was literary rather than practical, academic rather than of scholarly originality. And that in the whole body of his writing there is no indication of special or professional interest in foreign relations, certainly not in international law. He set forth moral issues in politics as literature. He,

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like others, found it "easy to be wise out of books, but . . . infinitely difficult to be wise in the midst of affairs." That Wilson brought with him into the presidency great guiding principles, ideals which became indistinguishable from his own ambitions, is certain; but that one can find in his pre-presidential years the *leitmotif* of the founder of the League of Nations is, in the opinion of the reviewer, not demonstrated.

JESSE S. REEVES.

University of Michigan.

Colonial Policies of the United States. By COLONEL THEODORE ROOSEVELT. (New York: Doubleday, Doran and Company. 1937. Pp. xiii, 203. $2.00.)

The author of this book served as governor of Puerto Rico for three years and as governor-general of the Philippines for more than one year; and he writes, not as a cloistered political scientist dealing with archive materials, but as a statesman with personal experiences, reporting on his reactions to the colonial policies of the United States. The book is very readable and stimulating for both layman and specialist.

Comparing in a cursory fashion the imperialistic policies of the United States with those of the other Great Powers, the author develops a thesis well portrayed in an anecdote which he recounts. A French colonial administrator said to the Colonel: "You Americans do not know how to handle colonies. A colony is a cow. You feed that cow and do not milk it. The British feed it and milk it as well. But we French—ah, we know how things should be done. We milk the cow and make it look for its own food." Whether or not such comparisons are valid, it may be pointed out that, although our empire may be on the whole a liability to the citizens of the United States, Hawaii is not.

The author then discusses the matter of our having become colonial-minded on the eve of the Spanish-American War. He treats of America's search for markets and the humanitarian attitude of the American people toward the maltreated Cubans as the important causes of the war. He omits the rôle of the newspaper rivalry between the *New York Journal* and the *World* as an important factor in precipitating the war; the contrary contention that American Big Business wanted peace with Spain through negotiations rather than war, so convincingly expounded by Pratt; and the propaganda for war by the Big Navy men, one of whom was the author's own father.

It is when Colonel Roosevelt discusses Puerto Rico and the Philippines that he is at his best. Undoubtedly he was one of the best administrators that these insular possessions ever had, largely because he felt that the immediate problem was to improve the economic welfare of our wards. A point that he emphasizes particularly is that the United States was, and

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is, very generous toward the natives, so that beyond a doubt their standard of living is much higher than that of other people living in their parts of the world.

As an ultimate solution of our imperialistic ills, the author recommends that we transform Puerto Rico and the Philippines into dominions. This would enable their people to enjoy their own culture, nationalism, and autonomy, while at the same time benefiting economically by reciprocal low tariff agreements with us, and militarily by our army and navy. The author borrows heavily from Moon and Clark and shows that empires do not serve as important sources of raw materials, markets for manufactured goods, safe places for the investment of capital, havens for surplus population, and strategic military and naval posts, but in the case of the United States merely give us some questionable national glory. In addition to advocating dominion status for our insular possessions, the author deprecates the fact that we have no colonial service, with the result that not only do our colonial policies change with each new Congress and President, but personnel changes as well, at dire expense to the welfare of the colonists. He congratulates President Franklin D. Roosevelt upon establishing the Division of Territories and Island Possessions in the Department of the Interior to administer Puerto Rico, Hawaii, Alaska, and the Virgin Islands—a step which he believes to be in the direction of a permanent colonial policy, administration, and personnel.

The reviewer wonders whether a people obsessed with the megalomania of ultranationalism would accept dominion status instead of complete independence, even though the latter might mean economic ruin. Furthermore, in the case of the Philippines, dominion status would not relieve us of responsibility for guaranteeing their political integrity against possible Japanese aggrandizement; and it is precisely this burden that our people are trying to escape.

J. H. LANDMAN.

College of the City of New York.

The Administration of Federal Grants to States. By V. O. KEY, JR. (Chicago: Public Administration Service. 1937. Pp. xviii, 388. $3.75.)

Federal grants-in-aid to the states are no longer new in the set-up of public administration in this country. Social security legislation, however, gave further challenge to administrative machinery. More and more has been demanded of the techniques of federal-state coöperation. Problems found to be recurrent in the administration of federal grants-in-aid form the core of Dr. Key's study. He interviewed federal officers in all of the grant-administering agencies and state officials in more than one-half of our forty-eight "laboratories." In obtaining, correlating, and summarizing data, he has assumed that problems of administration are "to a

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considerable degree common to all types of federally-aided functions." Such common problems include advance approval of state plans and budgets, federal inspection and field service, audits, records and reports, withdrawal of federal coöperation, the respective rôles of associations and conferences, federal and state structural organization and personnel problems, and the all-important issue of division of costs.

Taking as his starting point the familiarity of his readers with the existing literature upon legal, financial, and administrative issues pertaining to federal grants, Dr. Key strikes pay-dirt quickly in his consideration of those particular difficulties which confront grant-administering agencies. From extensive field work, an array of facts, and original interpretations come many findings pertinent to administrative specialists and political scientists. It is not the evaluation of types of programs undertaken by federal grants which constitutes the book's chief contribution. It is Dr. Key's analysis of methods employed to formulate grant-in-aid programs and the means pursued to secure effective prosecution of such enterprises.

Discussing advance approval of state action, Dr. Key demonstrates its superior value over other procedures in insuring that congressional policy will be carried out. It is likewise a defense mechanism for the state official who is under political pressure. It prompts state planning. As to field inspection, Dr. Key commends the general scheme followed by the Forest Service. The Bureau of Public Roads is fortunate in dealing with an end-product which can be evaluated by definite standards. The Extension Service and the Vocational Division must rely more upon reports than upon field examinations. This, according to Dr. Key, "is likely to be true of the Public Assistance Bureau of the Social Security Board." The federal audit of state expenditures is a post-audit and an independent one. Most of the older grant-administering agencies employ as auditors their functional experts who otherwise act as field representatives or inspectors. As a policy, this is questioned. The practice of disallowance generally involves minor matters. Reporting systems have been used principally to show gross measures of operational volume and compliance with statutory specifications. More significant are exploratory studies by the Bureau of Public Roads and the Bureau of Unemployment Compensation to relate cost to accomplishment in an effective way. Withdrawal of federal funds, in theory a big stick, is not so big in practice. Actually speaking, its use is limited. Congressional and intrastate political considerations are not ignored by even the best administrators. Associations of state officials have pulled most weight in the political and quasi-political functions.

In a perfunctory discussion, Dr. Key deals with specialized phases of the problem of federal and state administrative organization. He raises, but does not dispose of, various questions inherent in grants which involve state-local relationships. Many of these face the Social Security Board in

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developing satisfactory arrangements between state and local units for administering public assistance. The direct and indirect methods whereby state personnel standards have been altered through federal grants are clarified. Yet the reverse of the picture is not neglected; witness the limitations placed upon federal agencies in connection with the Social Security Act.

Dr. Key is careful throughout to avoid the generality for the particular. After his survey of the division of the costs of federally-aided activities, he cautions that it "furnishes no solution; it only points to problems." Without attempting much theorizing, the book describes succinctly and analyzes astutely the problems recurring in the continuous process of administering federal grants-in-aid.

ARTHUR W. BROMAGE.

University of Michigan.

Our Cities; Their Rôle in the National Economy. Report of the Urbanism Committee of the National Resources Committee. (Washington: United States Government Printing Office. 1937. Pp. xvi, 87, with numerous maps and figures.)

The Urbanism Committee was established to attempt to portray for urban and rural people alike the principal problems of urban living and the important place of cities in the national economic and social order. It did its work with the aid of a large staff divided into numerous sections for specific studies. This first report is a brief summary of all phases of the study.

In its accumulation of facts as well as in its style of presentation, the report reminds the reader of *Recent Social Trends* and the several special studies that accompanied that work. *Our Cities* has these special values, however: first, it gathers into one volume a summary of the data relating to cities; second, it is more recent and on some points more complete; third, it makes for more effective use of maps and figures to present its data. Indeed, the pictorial method of presenting data used throughout this volume is one of its greatest merits. In this respect it sets a standard that may be too high and too expensive for others to emulate, but certainly it makes this report an artistic achievement as well as a contribution to the methods of visual instruction.

The data presented are primarily social and economic. They deal with population, health, social institutions, wealth, industry, communications, and living conditions. Political and governmental matters receive more limited attention. Nevertheless, as far as they go, the data present an excellent sketch of our cities, their problems, and their place in the national life. In this respect, the report is an outstanding contribution to

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the literature of urbanism, and it presents an indispensable background of information for the student of city government.

Being an official planning body, the National Resources Committee felt the need of concluding its report with a series of recommendations. These the present reviewer is inclined to accept almost *in toto*, but he must in candor say two things concerning them. First, they represent the particular political philosophy of those who made the report, a philosophy that favors increased governmental activity and further centralization of functions. Here the plea is primarily for increased national concern for our cities and an ever-closer integration between national and local governments. Second, the data and the arguments presented in this brief report are insufficient to support a number of the recommendations that are made. The report is simply too brief. In its extensive survey of urbanism, the committee must have compiled a tremendous amount of unreported information. Does it not have an obligation to make more of this information available to the public?

WILLIAM ANDERSON.

University of Minnesota.

Aspects of the Organization, Functions, and Financing of State Public Utility Commissions. By C. O. RUGGLES. (Boston: Harvard University Graduate School of Business Administration. 1937. Pp. vi, 90. $1.00.)

In this study, Professor Ruggles has compiled in highly condensed form a large amount of factual material relating to certain problems of state public utility regulation in the United States. The method of presentation is largely comparative, the most recent available statistics being compared, in a series of charts and exhibits, with the findings of earlier investigations of a similar nature. Among the earlier studies, chief reliance is placed upon F. E. Clark's *State Railroad Commissions* (1891), the report of the National Civic Federation on state public utility regulation issued in 1913, and the 1930 edition of the *Bonbright Utility Regulation Chart*. The recent statistics collected by the author are generally for the year 1935, but in some instances developments during 1936 are recorded. Principal sources for such current material are state statutes, reports of state public utility commissions, data secured from various state agencies through personal interview or correspondence, and the latest revisions of the *Bonbright Utility Regulation Chart*.

Chapter I comprises a brief sketch of the origin and development of state public utility regulation. Following in order are chapters dealing with public utility commissioners, commission staffs, commission jurisdiction, and sources of funds for the financing of commission regulation. A final chapter summarizes the findings and lists the reforms that are considered most urgent at the present time.

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Professor Ruggles has made no attempt to analyze thoroughly the data presented. To do so would have required many years of research and the writing of several large volumes. It is probably unfair to consider this as a criticism of his work, especially in view of the fact that no claim to such a study is made. It may also be readily admitted that a useful purpose has been served by marshalling an array of statutory and administrative provisions governing the personnel, jurisdiction, and financing of these various state agencies. Other scholars will certainly find here a convenient source of recent information on the subject. Nevertheless, in reading this material one regrets that the "whys" and "wherefores" of the various divergent provisions were not examined more fully. It would help to know, for example, why one state drastically limits the tenure of commissioners, while another is quite liberal in this respect; why one state is niggardly in salary allowances, while another is generous; or why this state has severely restricted the powers of its regulatory agency, while that one grants wide powers. One wonders also what are the actual results achieved under one set of provisions and regulations, and how these compare with the results in other states where widely different provisions and methods are followed. A complete analysis of the problem of state public utility regulation requires not only an acquaintance with the legislative and administrative rules in force in the several states, but also a knowledge of the various political and economic conditions which influence the development of such provisions and an appraisal of the practical results obtained from their operation.

It is impossible to treat here the numerous reforms which are convincingly urged. Many of them, such as the improvement of staff personnel by means of higher salary scales, selection on the merit basis, and a more protected tenure, are unquestionably needed. Especially interesting is the view that the future development of public utility regulation should be built around a regional program of federal-state-local coöperation, in which the principle of administrative decentralization would receive the widest possible application. It is significant also that the author seriously questions the wisdom of the recent proposal of the President's Committee on Administrative Management to place the quasi-legislative and the administrative aspects of federal public utility regulation under the immediate and direct control of the chief executive. Like many others, he is apprehensive about any plan that would subject these phases of public utility regulation, either federal or state, to the free play of partisan political influences.

PAUL T. STAFFORD.

Princeton University.

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The Unicameral Legislature. By Alvin W. Johnson. (Minneapolis: University of Minnesota Press. 1938. Pp. ix, 198. $2.50.)

In this book, Mr. Alvin Johnson traces the historical arguments in defense of the bicameral system, the criticisms "directed against it in practice, as well as proposed remedies for legislative ills." The latter fall into two classes. The first includes the long overdue but familiar milder remedies such as simplification of procedural practices, improvement of the quality of membership, curtailment of the quantity of legislation, establishment of coöperation between the two houses and between the latter and the executive, and utilization of technical aids and resources for improving the content of legislation. The second remedy, while more drastic because it runs counter to long established tradition, is the adoption of the unicameral legislature.

After presenting a synoptic analysis of the success and failure of the unicameral movement in the respective states since 1912, the author concentrates his discussion upon the recent legislative unicameral proposals, especially those in California and Ohio. A table listing the constitutional amendments proposed in 1937 legislative sessions, exclusive of proposals for study commissions, is one of the most valuable portions of Mr. Johnson's book. While the author is sympathetic, on the whole, with the unicameral movement, which has gained great momentum of late, he nevertheless maintains a judicial attitude throughout by pointing out that the adoption of a unicameral legislature must also take account of such problems as modernization of adequate procedure, representation, closer working relations between the executive and the legislature, and development of proper means for a sound approach to legislation. The content of recent proposals supplies abundant evidence that the proponents of the unicameral institution have not overlooked the major issues involved. Since proposals for reform meet stubborn opposition from legislative bodies, it is surprising that Mr. Johnson passed over the efforts now under way in Oklahoma, California, Ohio, and Missouri to submit proposals for unicameral amendments to direct vote of the people. Inclusion of these proposals, at least in the appendix, would have been of value.

The subject-matter in the chapter "Nebraska Adopts a Single Chamber Legislature" suffers from too much reliance upon colorful journalistic reporting. The statement attributed to a "lobbyist" who called the unicameral legislature a "lobbyist's paradise" (p. 142) is typical. The author's own statement that "some sixty empty seats in the back of the room" were "assigned to the lobbyists" (p. 145) implies official action by the house, or at least tacit approval, implications which are contrary to fact. Mr. Johnson also seems to be greatly confused about the method of selection of committee chairmen under both the unicameral and bi-

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cameral systems. The rule which grants to each committee the right to elect its presiding officer (p. 139) does not go into effect until a subsequent reorganization of the house committees. In the first session under the new system, committee chairmen were appointed by the committee on committees, and not elected as the author states (p. 145), nor appointed by the presiding officer of the committee on committees, as he says on page 139. The inaccuracies which appear in this chapter do not, however, detract from the general value of other sections of the book.

JOHN P. SENNING.

University of Nebraska.

The Social Security Act in Operation. By BIRCHARD E. WYATT AND WILLIAM H. WANDEL. With the collaboration of William L. Schurz. (Washington: The Graphic Arts Press, Inc. 1937. Pp. xiii, 382.)

Amid the tumult and confusion now raging in politics and economics, there is something quietly reassuring about this matter-of-fact guide to the Social Security Act in operation. In severely technical exposition—first in a summary introduction and then in detail—the book explains the Social Security Act, outlines the agencies set up to administer it, describes their operations in minute detail, and points out their problems, present and future. It is from this matter-of-fact approach that one gains the significant impression of reassurance regarding the subject of social security. Here, one feels, is a solid institution come to stay and grow. While debate waxes hot over the contradictions between the past and present, here, already in operation, is a useful bridge between the two.

Grouping the several titles of the act into three principal categories, the authors devote a definite part of the book to each one—Federal Old-Age Benefits, Unemployment Compensation, Public Assistance and Public Welfare. The detailed information under each topic makes the book an excellent manual for all those—lawyers, accountants, tax experts, business men, and public officials—whose work brings them into practical contact with the machinery of social security, federal and state.

Except in the case of old-age reserves, the authors (due undoubtedly to the fact they are expert executives of the Social Security Board) refuse to criticize and to evaluate the law and procedure they describe. A "factual study" of an institution so immediately and intimately affecting present problems which fails to tell wherein it succeeds in meeting the underlying real problems wherein it falls short, and how it may be improved, is in the long run a sterile performance. How this failure to take the broader view will limit the usefulness of the book is obvious. Experience with similar institutions shows that the law and the procedure will be changed early and often. Thus, as a practical guide, the present volume will have a brief span of life before it will have to be superseded by other

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guides currently needed. Had the book included controversial issues, critical observations and evaluations of the present law, it would have assurance of longer life and greater usefulness.

The book has one value not likely to be voided by time—reference value for the expert in the social sciences. This lies in the meticulous care with which the authors describe the pioneering steps of what is for America a great adventure likely to have far-reaching effects upon political and economic life. Long after changes make the present volume obsolete as a guide, it will remain as a succinct, factual record of how a new social institution came into being and of exactly how it set about filling the needs which called it forth.

GEORGE H. E. SMITH.

Yale University.

Studies in Current Tax Problems. By MABEL NEWCOMER *et al.* (New York: The Twentieth Century Fund. 1937. Pp. xxiii, 303.)

Studies in Federal Taxation. By RANDOLPH E. PAUL. With an Introduction by Jerome Frank. (Chicago: Callaghan and Company. 1937. Pp. xxxiii, 341.)

Taxation of Insurance Companies. By PHILIP L. GAMBLE. (Albany: J. B. Lyon Company. 1937. Pp. 195.)

The Taxing Power. By WALTER K. TULLER. (Chicago: Callaghan and Company. 1937. Pp. xvii, 460.)

Studies in Current Tax Problems was prepared in connection with a survey of taxation under the direction of the Twentieth Century Fund. It consists of five studies which amplify to some extent an earlier volume, *Facing the Tax Problem.* The first study, "The Estimate of the Tax Burden on Different Income Classes," by Mabel Newcomer, is an attempt to find out exactly what is the total tax burden borne by typical American citizens. The interlocking federal, state, and local taxes, direct as well as hidden taxes, are examined under carefully selected basic assumptions. The conclusions indicate that the American tax system is geared to pinch at both ends of the economic scale, and Dr. Newcomer finds the same general tendencies true in both New York and Illinois. An interesting corollary is the demonstration that city dwellers bear a generally higher tax burden in terms of percentage of income than rural dwellers, but receive an extensive list of services.

The second study, "A Comparison of the Aggregate Burden of Federal Income Tax and State Income Tax in Eleven Selected States," by Carl Shoup, Bernard S. Shimberg, and William Vickrey, was made to find out exactly how much additional burden is caused by the imposition of a state income tax. Their findings show that when such a tax is added to the

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federal income tax, the net burden seldom amounts to more than four per cent of the total income, and usually amounts to less. State income tax laws show extremely wide variations in the rates charged. The rates in the eleven states covered and the federal system are summarized in a series of tables based on the incomes of hypothetical tax-payers. This study clears up many of the half-truths which have been circulated in regard to the burden of the income tax. "The Analysis of State Property Tax Rates, 1925–1936," by Thomas Reynolds, answers the question of what has happened to state property taxes during the depression. A carefully prepared table, based on detailed explanations from tax officials and from documentary sources, develops the generalization, taking the picture as a whole, that state rates have had a tendency to decline rather than to rise. The average rate for the last four years of the period was found to be lower in thirty-one states than the average rate of the first four years of the period. In only eight states was the situation reversed.

"Costs of Administering the Various State and Local Taxes," by Thomas Reynolds, the fourth study in the series, brings together materials on tax collection which are of vital importance to any tax structure. The results of the research presented in a series of tables include data on income taxes, inheritance and estate taxes, the gasoline tax, motor vehicle license taxes, state and local property taxes, special corporation taxes, sales taxes, and liquor and beverage taxes. Administrative costs of tax collection have not been analyzed except in isolated cases prior to this study. In fact, material is difficult to secure and for the most part tax officials and legislators have not been concerned with these costs. New York is the only state in which collection costs have been computed for all taxes. The author wisely avoids generalizations except in the broadest terms and allows the facts to speak for themselves. Susan B. Brown and William Vickrey present a method of making estimates of probable yield from income and estate taxes. The procedure is technical and the methods proposed of primary interest to professional economists, tax officials, and statisticians.

In the earlier volume, *Facing the Tax Problem*, estimates were made of national, state, and local expenditures. In the volume under review, Dr. Mabel Newcomer has explored the estimates based on an analysis of the nature and purpose of past expenditures. The conclusions are subject to all the dangers of price changes and national emergencies, and developments since the publication of the study will tend to invalidate them. In almost every state of the Union, taxation has been the subject of study by legislative commissions. These groups have brought together volumes of information, most of which has not been digested. Researchers in the field have been handicapped by lack of a suitable bibliography. This has been corrected in the last section of the volume under review, but by

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definition the authors have included only those studies dealing with the state's entire tax system. The decision is to be regretted. Nevertheless, the contribution is an outstanding one and will enable research librarians to check their collections. This volume is indispensable to students of public finance, especially those who are concerned with the administrative aspects of this problem.

The Taxation of Insurance Companies, by Philip L. Gamble, is the twelfth special report of the New York State Tax Commission. This analysis of a highly specialized field of taxation has been extremely well done. Highly objective in his approach, Mr. Gamble has surveyed his limited field of taxation and has shown the underlying assumptions of insurance company taxation. An excellent bibliography is included, but the lack of an index is to be regretted.

Studies in Federal Taxation includes three, two by Rudolph Paul, "Restatement of Tax Avoidance" and "Suggested Modification of the Bad Debt Provision," and one by Mr. Paul and Philip Zimet on "Realistic Valuation for Federal Tax Purposes." The three constitute a major contribution. The purpose of the authors is stated clearly in the preface. They have sought to show that tax law is part of, and not apart from, an entire system of law. They have sought for an underlying philosophy in the law of tax avoidance; they have looked for realism in the field of tax valuation; and they have tried to show that the surprising complexity of the bad-debt provision of the federal income tax statute may arise from ill-considered simplicity of the statute. The authors have accomplished their purposes in a manner which is penetrating and brilliant. The volume is painstakingly documented, and the notes constitute a significant contribution to teachers of the law of taxation as well as to the practitioner. An alphabetical list of law reviews and other authorities cited, an alphabetical table of cases cited, and an index unusual in its scope and completeness add to the joy of the user of this volume. Writers on complex topics could well follow the example of these authors and be as considerate as they of students and researchers. Jerome Frank gives a setting to these essays by his introductory note, which is both stimulating and refreshing.

A Treatise on the Taxing Power, by Walter K. Tuller, is a most amazing volume. In the preface, the author states that "taxes have become so heavy that they threaten the public welfare." One wonders as to Mr. Tuller's conception of public welfare. This is more than a volume on taxation. It is an expression of the author's social and economic philosophy, supported by quotations from majority opinions or dissents of various courts. The author disagrees with certain social and economic trends and discovers the tax system to be responsible. Although our tax system has

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countless defects, nevertheless the income tax, against which Mr. Tuller inveighs, meets the approval of the careful research organization of the Twentieth Century Fund. Some may find satisfaction in Mr. Tuller's volume, but the analysis made in the other three throws more light on our complicated tax structure. The Twentieth Century Fund Studies, Mr. Gamble's careful analysis, and the brilliant essays by Mr. Paul on complex legal problems push forward the frontiers of understanding of taxation. They as well arouse the interest of the layman and the practitioner. Understanding precedes the solution of our tax problems, and these three volumes have contributed to that end.

FINLA G. CRAWFORD.

Syracuse University.

King Edward VIII; An Intimate Biography. BY HECTOR BOLITHO. (Philadelphia: J. B. Lippincott Company. 1937. Pp. 328. $3.00.)

The King, the Constitution, the Empire, and Foreign Affairs. BY ARTHUR BERRIEDALE KEITH. (New York: Oxford University Press. 1938. Pp. xl, 194. $3.00.)

Mr. Bolitho's biography of King Edward VIII is more than a record of the events of his life. It emphasizes the development of his character and characteristics. The author has had unusual opportunities for intimate knowledge of his subject, and has long been preparing this work, which, however, has been revised a great deal since the abdication.

Most of the book deals with the period before Edward became king, —his boyhood and youth, his experiences during the World War, his extensive travels, and his life in England. Three concluding chapters deal with the year of his reign, his relations with the Prime Minister, and the abdication.

One characteristic of the early years of the Prince was his shyness, which he largely overcame. There were also early traces of melancholy and nervousness, and later a distinct note of sadness. At the same time, his vitality was notable; he had an interest in social and economic problems; and in some respects he departed from conventional standards. These factors added to his personal popularity. His war and travel experiences broadened his outlook; but, as was true of many others of his time, he found himself out of touch with the older generation, and in particular he lacked intimate personal friends among those in official and influential positions. In these and other respects, Mr. Bolitho finds a decline of moral character.

As king, while he did not wholly neglect his official duties, he became more assertive in showing his distaste for formal ceremonies, introducing

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economies in the royal household, and continuing his own private life, in which his attachment to Mrs. Simpson had come to play a leading part.

In the tragic crisis, which Mr. Bolitho, like many others, considers a conflict between public duty and personal happiness, Edward displayed courage and honesty but was distraught and unreasonable. Referring to criticism of the Prime Minister, the cabinet, and the Archbishop of Canterbury, the author's view is indicated in his statement that "If Mr. Baldwin and his colleagues failed to observe the ethics of the Constitution, they also carried the country through the greatest drama concerning the authority of the monarch since the time of James II."

In contrast to the personal analysis of Mr. Bolitho's biography, Professor Keith's volume presents a discussion of constitutional, legal and political problems. The author brings together a series of letters to important newspapers, supplemented by short essays, on recent events, covering the period from December, 1936, to September, 1937. The first part, on the king, the constitution, and the Empire, consists of thirty-one short articles. One group of these deals with the abdication of Edward VIII, the Regency Act, and the change in the Coronation Oath, and is followed by two articles on the king in the Empire and the increased importance of the prime minister. The other articles in this part deal with the Imperial Conference of 1937, and British relations with the Irish Free State, the Union of South Africa, Canada, India, and Burma. Part II, on foreign affairs, includes twenty-five articles discussing British policy in relation to Ethiopia, Germany's colonial claims, the League of Nations, the civil war in Spain, the Sudan, and Palestine.

Throughout these articles there is an active note of criticism. The Regency Act is marked by grave defects. The alteration of the Coronation Oath is said to be illegal. The results of the Imperial Conference were even more negative than usual; while in Eire, South Africa, and Canada the links with the mother country have been further weakened. Errors have hampered the inauguration of responsible government in India. In foreign affairs, Ethiopia has been abandoned; in connection with the Spanish civil war, maritime rights have been abandoned, and a new and unsatisfactory doctrine of non-intervention formulated; sovereignty over the Sudan has been disclaimed; and efforts to strengthen the League of Nations have failed.

Perhaps the most striking position taken is that under Mr. Baldwin the position of the prime minister in Great Britain has been greatly aggrandized, at the expense of the king, the cabinet and the Commons.

JOHN A. FAIRLIE.

University of Illinois.

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Royal Commissions of Inquiry: The Significance of Investigations in British Politics. By Hugh McDowall Clokie and J. William Robinson. (Stanford University: Stanford University Press. 1937. Pp. vii, 242. $3.00.)

This book is an important contribution to the literature regarding governmental investigating bodies. The authors give a scholarly account of the origin, development, and present status of British royal commissions of inquiry. They date the origin of the device to Norman times and use the *Domesday Book* of the eleventh century as the first example. It is nearly ninety years since an entire book has been devoted to this important subject, and the present work is the only impartial book on the topic. The legal basis, the function, the results, the procedure, the personnel, and the reporting of royal commissions are considered.

The thesis is advanced that the royal commission of inquiry as an investigating agency has been declining since 1850 except during the period from 1890 to 1910. The reasons assigned for this decline are the growth of the expert administrative services, which act as fact-gatherers for the government; the increased use of departmental committees, which furnish a little more flexible procedure; the tightening of party discipline, which has removed certain questions from the field formerly occupied by investigating bodies; and the development of the conference technique.

About one-half of the book is devoted to the origin of royal commissions and to their development prior to 1900. From the purely historical point of view, this material is valuable, but from the practical point of view it has meant that the authors had less space to devote to such topics as the influence and popular reception of recent commissions. The authors make comparatively little use of the newspaper and periodical material available regarding particular commissions.

Political scientists, government officials, and private investigating bodies should find this readable volume a very useful guide to research methods in the British democracy.

Harold F. Gosnell.

University of Chicago.

The Government of the Soviet Union. By Samuel N. Harper. (New York: D. Van Nostrand Company. 1938. Pp. xviii, 204. $1.25.)

Students of Soviet Russia have eagerly awaited Professor Harper's summation of the recent changes in the Soviet system as indicated by the new constitution, the drastic party purge, and the shifting position of the Soviet Union in world affairs. In this volume, he not only presents an interpretative summary, but also restates the whole story of the revolu-

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tion in the light of the latest developments, so that the account covers the past and the present, and indicates broad lines in the future.

Especially valuable are the general deductions on trends, e.g., that the present moment is a "turning point" in Soviet affairs, with reëmphasis on politics which had been neglected during the feverish concentration on economic development since 1928 (thus the reorganization of the state, the party, the trade unions); that the Soviet system is becoming more democratic (if judged by results rather than method); that it is also becoming more nationalistic, with a new type of patriotism for defense of the new order, etc.

By compressing so much material into small space, Professor Harper has designed a text admirably suited to accompany a series of university lectures. The many references to Tsarist history, or to items in the companion volume (*Source Book on European Governments*), presume wide knowledge of the subject. The book is not "popular" reading. But for the student who has found difficulty in following Soviet developments the book is the proverbial gold mine of judgments, explanations, and apt key phrases.

The preface, a model of succinct summary, sets the tone of the text, and serves as a preview. Another striking item of presentation is the chapter (15 pages) entitled "Time Table of the Revolution," in which the author compresses the high points of development from the Paris Commune to the new constitution of 1936. The chapter on "Determination of Policy" is perhaps the most revealing, especially the sections on Stalin, who "has been more 'rough' than was Lenin, perhaps because in many respects the period of his leadership has been a more difficult one." Professor Harper points out that all of the three great purges of 1921, 1928, and 1934–36 were connected with momentous changes in the "continuing revolution," and were directed against violation of party discipline. The fourth purge, beginning in 1936, affects party members involved in "crimes against the state."

The new features of the "functioning of Bolshevism" are analyzed under the heading "Law-Making"—the exclusive legislative character of the new Supreme Council, the referendum, the secret ballot, etc. Throughout the book is a running explanation of the "politicalizing process" to combat bureaucratism and functionalism. Professor Harper declares: "The constant purges of the Party and the frequent transfer of Party members from one responsible post to another will perhaps temporarily disrupt management, by removing able executives and making others nervous and unwilling to show the initiative necessary for efficient management. Political considerations must prevail, however, even if this means further inefficiency of administration. This is part of the cost of building a new order. The politicizing is expected to develop 'revolu-

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tionary vigilance' in all instrumentalities of mass control." The politicalizing process reaches to the Red Army by the reintroduction of the system of political agents attached to the military units.

Although he does not think that Article 127 of the new constitution guaranteeing inviolability of person can be truly effective until new codes are worked out, Professor Harper does seem to believe that the Soviet system is working toward "less regimentation, greater security, and correspondingly a larger measure of liberty for the individual."

The concluding chapter, "The Soviet Union in the World," is a series of judgments on world revolution, peaceful coëxistence, imperialism, the Spanish conflict, the treason trials, etc. Of particular importance is this paragraph: "The non-Soviet world cannot expect the Soviet régime to renounce its revolutionary origin. The fact that it has been a social-economic as opposed to a purely political revolution, and is still in progress, makes inapplicable to the Soviet régime the view that a leadership of revolutionary origin gradually but inevitably becomes 'normal.' . . . The Communist International is an integral part of Bolshevism, or even of the Soviet system, although it can be claimed that technically it is not officially connected with the Soviet Government. A precise definition of the relationship is impossible in terms of Western institutions. As the Soviet Foreign Trade Monopoly has had to be accepted in commercial relations, the presence of the Communist International at Moscow will have to be accepted in diplomatic and political relations. But both are now essentially part of the technique of defense of the Soviets. . . . The Soviet policy of the last years has been to 'cultivate its own garden,' and at the same time not to permit of any trespass on this garden. In this way, Sovietism has remained revolutionary while at the same time becoming 'nationalist' in a peculiar but real sense."

Finally, one may note the excellent index which makes readily accessible the judgments on the multifold aspects of the Soviet system, the accumulated wisdom of Professor Harper's thirty years' study and observation of Russian affairs and people.

BRUCE HOPPER.

Harvard University.

The Law of Nations: Cases, Documents, and Notes. BY HERBERT W. BRIGGS. (F. S. Crofts and Company. 1938. Pp. vii, 594. $8.00.)

In a review of another recent case-book, the present writer ventured to suggest that the "time was ripe for the preparation of a source book for the sole use of the literary colleges, based consciously upon the recognition of a divergence in aim, and hence in method and approach, between the two types of courses in international law now given in this country." Professor Briggs' *Law of Nations* is such a book. It consists almost en-

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tirely of materials which belong to the field of international law in the strict sense, and rigorously excludes certain subjects, such as the American law of nationality, which pertain solely to municipal law. The bulk of the volume is made up of 155 cases, of which 52 are drawn from American jurisdictions, 41 from British, 12 from other countries, and 50 from the decisions of international tribunals. The editor recognizes, however, that while "the law of nations is probably best taught by the case method, . . . the student needs more than cases." He has, therefore, included 48 well-chosen treaties, state papers, documents, and statutes. The sources upon which the editor has drawn are as wide as those of international law itself.

But this is no mere compilation. Throughout the text the editor has scattered notes, 89 in number, in which he discusses and evaluates further cases, indicates the trends along which the law seems to be developing, and opens up a path through the "vast bibliographical jungle" of the literature. To many students and teachers, the notes will seem the most valuable feature of the volume. The comments are clear, penetrating, and informative, and in some instances are original contributions in themselves. The range of the literature which Professor Briggs cites reveals the thoroughness with which the entire work has been prepared. The reviewer offers only the suggestion that the contributions of German legal science prior to 1933 have not been given sufficient weight.

No volume of this scope could possibly preserve an even quality throughout. There are chapters which, in the reviewer's opinion, fail to maintain the high standard of the whole. One can point, in particular, to that on the subjects of international law, which contains but two cases: the hackneyed Cherokee Indian case and the Cayuga Claims case. In view of what Professor Wright has called the "tropical luxuriance of political and legal organization, competence, and status" in the international world of today, this selection appears inadequate. A curious omission is found in the fact that the terms "air-space" and "air-craft" are nowhere mentioned.

Professor Briggs has carried out an original conception with consistency. His work, which combines the advantages of a text and a case-book, should be widely used.

LAWRENCE PREUSS.

University of Michigan.

Comparative Commentaries on Private International Law, or Conflicts of Laws. BY ARTHUR K. KUHN. (New York: The Macmillan Company. 1937. Pp. xxi, 381. $4.50.)

The author of this book presented the English-speaking public with a translation of Meili's *International Civil and Commercial Law* in 1905. The present volume is a further contribution to the Continental or inter-

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national point of view on the subject which common law lawyers prefer to denominate "conflict of laws." It is notable for the illuminating historical introduction in which the evolution of modern concepts concerning the application of foreign laws grew out of the Roman *jus gentium*, the Barbarian personal laws, the medieval statutes and commentaries, and the theories of the Renaissance publicists. It is also remarkable for the exhaustive comparative treatment of each topic. The author presents the concept of the common law, the various Continental systems of law, the Hague Convention, the Bustamante Code, and other efforts at conventional regulation, with astute critical comments.

The author has evidently reacted to the "isolationist" and "nationalist" point of view characteristic of recent common law treatments of the subject, evident in the work of Professor Joseph Beale and the restatement by the American Law Institute (p. 27). Kuhn points out that the common law on the subject in fact originated in treatises like that by Story, giving as much weight to Continental commentaries as to common law precedents. "The comparative method," he writes, "has a special value in a branch of legal science which, if viewed with functional approach, will tend to resolve conflicts of law not in one jurisdiction alone but everywhere. A nationalist view is quite possible in private as in public international law. We venture to believe that it is not the progressive view, nor does it respond to the facts of modern life" (p. 59). The difficulties of a purely national approach are especially suggested by the discussion of the doctrine of *renvoi* (p. 49 ff.).

Besides introducing the student to a vast field of learning on the subject, this book provides a much-needed text for the practicing lawyer and the teacher of law. It is also full of suggestions for the student of international law and comparative law. Its form is convenient and the table of cases, bibliography, and index render the contents easily accessible.

QUINCY WRIGHT.

University of Chicago.

Theory and Practice in International Relations. By SALVADOR DE MADARIAGA. (Philadelphia: University of Pennsylvania Press. 1937. Pp. 105. $1.50.)

Collective Security and Peaceful Change. By PITMAN B. POTTER. Public Policy Pamphlet No. 24. (Chicago: University of Chicago Press. 1937. Pp. 36. $0.25.)

Problems of War and Peace in the Society of Nations. By E. D. DICKINSON *et al.* (Berkeley: University of California Press. 1937. Pp. viii, 155. $1.50.)

For the increasingly intelligent interest of the American people in international affairs, these three little books furnish a wide variety of

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material, ranging from the tenuously theoretical to the severely practical, and approaching the problem from the varied viewpoints of many fields of human study.

Señor de Madariaga, delivering the William J. Cooper Foundation lectures at Swarthmore College, is concerned mostly with solidarity and sovereignty. The elements which go to make up solidarity are objectively present in the community of nations, but there can be no subjective solidarity so long as sovereignty stands in the way. He discusses, in his inimitable way, the psychological factors in sovereignty, and then analyzes the Covenant of the League of Nations to see how far it limits sovereignty. There are some non-national patterns which help—business, religion, Marxism, fascism, etc. The world is like a monster with one body (solidarity) and many heads (sovereignties). Retarding forces in the development of the community are sovereignty, memories of the last war and fears of the next one, mental reservations, fascism, obsolete habits, isolationism; accelerating forces are to be found in the actual existence of world government as a source of community spirit, moral pressure, and reason. Statesmen, the author concludes, cannot succeed today unless they realize that there are no foreign affairs but only world affairs; and only then, through a permanent system for carrying them on. They need a world council for world affairs, backed by a powerful élite of world citizens behind it.

Professor Potter has written a compact and practical little study of collective security. The chief problem today is peaceful change; can we have such change without sanctions? The opposition to sanctions, he says, is based not so much upon positive principles as upon particular objections, e.g., that such use of violence costs more than it is worth. But since violence is inevitable, it would better be used in behalf of justice; and if sanctions were established and known, they would not be much used. It is untrue that a great nation cannot be coerced. To the charge that nations cannot be persuaded to coöperate in this fashion, or that sanctions depend upon respect for obligations, Professor Potter replies that the only way to find the answer is to try. And if it is important to remove causes of injustice, force will certainly be used for that purpose one way or the other. If the League of Nations is failing, so is every other instrumentality for preserving law and order; but the overwhelming majority of states still support collective security. It is not a question of sanctions or no sanctions, but of national sanctions or international sanctions—which seems to the reviewer to put the whole matter in a nutshell.

For the second time, the University of California has arranged a series of lectures on international relations by its staff. The first is by Dean E. D. Dickinson, of the Law School, who traces the integration of the

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community of nations and the growth of international government. In the second lecture, an economist, Professor Landauer, discusses socialism in relation to war and peace. He is unable to accept the socialist claim that capitalism causes war, but thinks that socialism aids peace by seeking a better life for mankind. One thing worth fighting for is peaceful change, and socialism made a mistake in not treating opponents of peaceful change as outlaws. Another economist, Professor Robert A. Brady, considers fascism in the same connection. Fascism, he says, has maintained capitalism, concentrated power in a few hands, and keeps heavy industry at work upon armaments which are to be used to secure economic expansion abroad. It has pushed the masses down and done nothing to alleviate their unrest. It endeavors to militarize the nation, and thus war becomes an end in itself; the only hope for peace is the swift mobilization of the forces of democracy against it. Professor Charles G. Haines argues that constitutional government must mean living law rather than law encased in judicial precedents, if democracies are to keep up today and contribute to peace. Professor Malbone W. Graham compares international government today with the American government at the time of the Articles of Confederation. British opposition to Wilson's desire for a written constitution resulted in decentralization of authority; and the Covenant of the League has been subjected to strict interpretation ever since. Secession is permitted; nullification also, as sanctions in 1935 showed; the unanimity rule permits a veto. Other stones rejected by the builders were those for economic change and for political action. International government today is confederal; it should be federal. Finally, Dr. George M. Stratton, from the viewpoint of psychology, asks whether world peace is an attainable ideal? Such forces as the struggle for existence, "human nature," racial prejudice, and patriotism, he thinks, can be overcome; and there are strong forces working for peace, such as the desire for wealth, for justice, and for security.

It is significant to note that all the above authorities agree that progress is attainable only through international coöperation, backed by collective force.

CLYDE EAGLETON.

New York University.

At the Paris Peace Conference. By JAMES T. SHOTWELL. (New York: The Macmillan Company. 1937. Pp. x, 444. $4.00.)

This book is the result and the record of Professor Shotwell's experiences as one of the most active, trusted, and influential members of the group of American experts at the Peace Conference known as "The Inquiry." The major portion consists of Shotwell's diary, somewhat revised in the light of later information and events, but there are five

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additional chapters, in which Shotwell makes a critical analysis of the organization and work of the Inquiry and of the Peace Conference and in that way supplements and clarifies the material in the diary. There are also seven appendices, in which are reproduced various materials, such as memoranda or papers on the International Labor Organization, on some of the difficulties in the drafting of the treaty, and on the arrangements in the League Covenant for dealing with the British Empire.

Professor Shotwell had an extraordinary variety of tasks at the Peace Conference, but his principal assignment was in connection with the problems of labor; and the record shows that Shotwell himself, although much of the time in an anomalous position and frequently lacking authority, was largely responsible for the compromises that made the International Labor Organization possible. Much more important than the facts about Shotwell's personal contribution, however, is the record of how far the Continental delegations, and especially the French, were ready to go in the surrender of their precious national sovereignty to a genuinely powerful international body, at least in this field of labor; how far even the British were ready to go in that matter; and how nationalistic and how difficult were the Americans. "For the United States, which at best had come against its will into the arena of world politics, any such suggestion as that its government should abrogate its control of such domestic affairs as industrial legislation seemed almost automatically to exclude it from participation." The most discouraging reception of the plan for the I.L.O. was by Lansing, who "showed about as much understanding of the labor problem as Pichon might," and who saw in the I.L.O. "a departure from diplomatic practice which might make further adjustment necessary in years to come and would be bothersome for foreign offices to carry out." Even Wilson had not given these problems any serious consideration before, but was "keen and interested" when they were explained to him by Shotwell. It is interesting also to note that Shotwell seemed to sense more than anyone else at the Peace Conference the possibility of American failure to join the League of Nations, and hence proposed a plan for associate membership in the League which would have made it possible for states to participate officially in labor conferences under League auspices without membership in the League itself. Although his proposal did not then receive serious consideration, there must be for him considerable personal satisfaction in the fact that the United States has at last found it possible to join the I.L.O., and essentially on the basis of the plan he worked out for such a contingency.

The diary throws considerable light on a number of matters in respect to the Peace Conference. It shows, for example, how thoroughly prepared were the British, particularly by contrast with the Americans. It shows how genuinely eager were the British and the French, in particular, to do

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justice to labor, if not to the Germans. It shows much on the problem of mandates and the work of George L. Beer. It shows also that Shotwell had many misgivings about the spirit of the Peace Conference and about the Peace Treaties. As early as February 5, he was unable to sleep, "trying to size up whether this Conference was getting anywhere or not," and he is clear that "the Peace Conference failed to meet the expectation of the liberal and progressive thinkers in almost every country." He evidently believes, however, that the peace was about as good a peace as could be made under the existing circumstances, that Wilson's decisions were in general supported by his experts, that it is a post-war myth which has pictured the Peace Conference "as a sinister thing, sowing dragon's teeth, vindictively, subtly, while high-minded idealists looked on confused and frustrated." He points particularly to the fact that the substitute treaties entered into by the United States, which embodied the peace conceptions of the Wilson critics, were actually worse than those negotiated at Paris, in that they kept for the United States all the rights and advantages of the harsh provisions and "the only thing surrendered is the machinery by which redress of grievances could be assured and treaties modified by common agreement under the pressure of public opinion. . . . It is at least not unfair to the architects of the Conference of Paris to recall how much better a task they performed than that achieved by those who denied the Wilsonian vision."

There are numerous excellent features about this book. There are sidelights on Wilson, Lloyd George, Clemenceau, and a host of others with whom Shotwell associated on more or less intimate terms. There is an extremely interesting account of a dinner with the Emir Feisal and Colonel Lawrence; there is a long account of a trip to the battle fields with Sir Arthur Currie, the commanding officer of the Canadians, which reveals much about the general conditions and explains much about the hard public feeling about the Germans. Altogether, the book is something to welcome as an addition to the more authoritative works on the Peace Conference.

CLARENCE A. BERDAHL.

University of Illinois.

The History of Militarism. BY ALBERT VAGTS. (New York: W. W. Norton and Company. 1938. Pp. ix, 510. $4.75.)

This richly documented volume is the first thoroughgoing study of the "romance and realities of the [military] profession" (as the author's subtitle reads), certainly in English, perhaps in any language. Dr. Vagts, already well known for his study of German-American relations between 1890 and 1906, has here made a unique and highly significant contribu-

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tion to an understanding of the place of the war machine among the—and often above other—institutions of the state.

The author distinguishes at the outset between "the military way" and militarism. The former he definies as one in which "armies call for and make efficient, rational, up-to-date, and, to a certain extent humane, use of the forces available to them for [a] war decided upon not by themselves but by the civilian powers of the state." The latter he describes as "a vast array of customs, interests, prestige, actions, and thought associated with armies and war, yet transcending true military purposes . . . so constituted that it may hamper and defeat the purposes of the military way . . . Militarism has connoted a domination of the military man over the civilian, an undue preponderance of military demands, an emphasis on military considerations, spirit, ideals, and scales of value in the life of states."

On the basis of this distinction, the author traces, with a wealth of illustration drawn from contemporary political and military records and biographies, and much fugitive but valuable popular literature, the course of militarism from feudalism to the present. Three developments have occured, each the result of war. The collapse of feudalism produced the first, i.e., the creation of the standing army, officered by the nobility. Jealous of their social status, they transferred their caste feeling to the military sphere, claiming, and often achieving, not only a sharp differentiation from the common soldier in the right of the officer to rank, pay, and privileges, but a practical independence of civilian control by the very governments they served. There was a community of interest in the officer class which made enemies often little more than polite duelists in campaigns in which the preservation of their caste was more important than the winning of a battle or a war.

The second development resulted from the French Revolution—at once the creation of great citizen armies, embued with nationalist fervor, and a growing democratization of the military profession. But the aristocratic tradition persisted, indeed was cultivated, by characters as diverse as Washington and Napoleon. The officer class everywhere maintained a close corporate spirit, and tended, with the increasing democratization of government, to claim increasing immunity from civilian interference with the objectives as well as the techniques of military policy. This spirit reached it apogee in such generals as Sir Henry Wilson, who could speak of the British cabinet as "a miserable crowd. My contempt for their brains, knowledge, pluck, and character deepens every day."

The third change developed in and out of the Great War, when "totalitarian militarism" became not merely a temporary system but a permanent cult of the profession. In this stage, the militaristic caste system, its assumed superiority over the civilian government and intolerance of

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control by it, its pervasive militarization not only of governmental activity but of popular psychology, are the resultant of the historical evolution of the army within the state. In the states where the feudal tradition remains strongest, as in Germany and Japan, militarist ideology defines political objectives. In the democracies, like Great Britain, France, and the United States, the tension between militarist and civilian interests creates a condition of increasing interposition of the military profession in politics. Some of Dr. Vagts' most interesting chapters are devoted to "officers and politicians" and the "protection and promotion of military interests within the state."

This is a highly valuable book to the political scientist as well as to the historian. The author's interpretations are conspicuously devoid of bias throughout, his style always clear. His emphasis on the economic and intellectual forces at work in the historical periods of which he treats illuminate and enrich his arguments as to the importance of understanding the military phase of the making and application of public policy. Their relevance to the present crisis in the framing of domestic as well as foreign policy in this and every country needs no elaboration.

The chief criticism of this pioneer study of the influence of the professional soldier-caste on the politico-economic-psychological nexus of the modern state system is inherent in the subject itself. The clarity of Dr. Vagts' analysis and interpretations suffers from the great variety and complexity of the materials presented; the main course of his argument is sometimes clouded by the details which support it. Nor is it entirely clear, in the face of the overwhelming evidence to the contrary which he has amassed, whether he thinks that democracies can escape "militarism" while they seek defense by the "military way." Perhaps this requires a further study; certainly the author has facilitated, and perhaps will have inspired, it. Surely, too, so thoroughly documented a book as this deserves an index.

PHILLIPS BRADLEY.

Amherst College.

The Limits of Land Settlement. PREPARED UNDER THE DIRECTION OF ISAIAH BOWMAN. (New York: Council on Foreign Relations. 1937. Pp. vii, 380. $3.50.)

In this important study, prepared under the direction of Dr. Isaiah Bowman for the Tenth International Studies Conference, the Council on Foreign Relations has again been responsible for the production of a fundamental study in world relations. While the book itself is nothing more than a collection of ten separate papers devoted to different aspects of the problem of land settlement, the editing and organization have been so carefully carried out as to give a perfect unity in presentation.

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The first chapter, by Professor Carl O. Sauer, entitled "The Prospect for Redistribution of Population," deals with the broader aspects of land settlement. Professor Sauer confirms again the fact that, excepting certain parts of South America and the hinterland of Asia between Mongolia and Turkestan, no thinly populated areas any longer exist capable of supporting considerable agricultural populations. Obviously, technology has increased the possibilities of production in rich agricultural regions as well as in those of marginal character. The fact remains, however, that the days of old-fashioned pioneering, as an outlet for excess population, have come to a close. Even with developments in "vernalization," which shortens the germination period of seeds, the vast sub-Arctic areas of Canada and Siberia do not give promise of sustaining a large population through making them more available to agricultural production.

These limitations upon land settlement are further confirmed by Professor Carl L. Alsberg in the second chapter, entitled "Food Supplies in the Migration Processes." Although it is obviously possible, as he points out, to gain considerable production from semi-arid areas, tropical rain, forest regions, and deserts, through the use of irrigation and the application of scientific methods, these are at once so complicated and costly as to remain outside the realm of immediate solution of the problem of population pressure.

The remaining eight chapters of the book deal with specific areas of the world from the point of view of climate, soil, population distribution, and prevailing agricultural economy. In Chapters III and IV, Professors W. A. McIntosh and Bruce Hopper treat settlement and population factors in Canada and Soviet Siberia, respectively. While these two regions offer similarities in so far as climatic and soil characteristics are concerned, it is obvious that the problem of land settlement should vary in each case. A considerable part of the rapid settlement of communities in Russian Siberia has been motivated as much by political and strategic reasons as those of economic necessity. In the Canadian case, on the contrary, because of the absence of such political and strategic considerations, there is every indication that future settlement of available regions will not approach the pre-war figures. This is due both to lack of population pressure upon marginal lands and to the control of economic factors related to world trade.

The three chapters dealing with land problems in Asia[1] present in remarkably concise form the factors of population pressure in that region of the world. As is already well known to students of international affairs, in the case of both China and Japan no lands are available which can

[1] "The Main Springs of Asiatic Migration," by Owen Lattimer; "The Present Prospects of Chinese Immigration," by Chen Han-seng; and "Japanese Migration and Colonization," by Carl J. Pelzer.

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relieve in any permanent way the pressure on population within the immediate Asiatic region.

The last three chapters, written by Griffith Taylor, J. H. Wellington, and Isaiah Bowman, are concerned primarily with the possibilities of settlement in Australia, Africa, and South America. In the case of each of these regions, physical circumstances as to climate and natural resources are presented as a background for the study both of population movements to date and of the potentialities of future settlement. These three regions, which are nothing more, geographically, than southern hemispheric appendages of the great centers of population on the continents of the North, still contain considerable areas suitable for settlement of all racial groups. But although they are largely reserved to migrations of Western peoples, there is no evidence that they could provide more than temporary relief in the population pressure of Asia and India if left open to the colored races.

In his introduction to the volume, Dr. Bowman, summarizes this aspect of the problem as follows: "One conclusion stands out above the rest in a review of the following chapters: new land will accommodate too slow and small a stream of population to be of real social importance to the countries of origin. In our present nationalized world, in which the best lands have been occupied, and restrictive measures are in force, migration is no answer to economic and social strain induced by so-called over-population. Nor is military conquest either a practical or a rational answer. The struggle for additional territory as a step in empire-building can be understood; the hope that it will furnish an offset to a high birth-rate is based upon an illusion. No discernible or predictable stream of migration can keep pace with the birth-rates of conspicuously over-crowded countries."

BROOKS EMENY.

Western Reserve University.

Britain in Europe, 1789–1914; A Survey of Foreign Policy. BY R. W. SETON-WATSON. (New York: The Macmillan Company. 1937. Pp. x, 716. $9.00.)

The original purpose of Dr. Seton-Watson was to write a study of British foreign policy from 1822 to 1874. He laid aside this manuscript in order to complete his *Disraeli, Gladstone, and the Eastern Question* (1935), and subsequently decided to carry his detailed treatment of British foreign policy to the Boer War, and to add a prologue on events from 1789 to 1822 and an epilogue on the period 1900 to 1914. The prologue and epilogue, although not written on the same scale as the chapters from 1822 to 1900, have made possible a volume presenting "the first full and con-

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nected narrative, by a single writer, of British policy, as distinct from general European diplomacy."

Dr. Seton-Watson writes after a most thorough and comprehensive study of the documentary sources—not merely the British archives and the private papers of British statesmen; he pays particular attention to Continental sources and is conversant with the most recent historical research. If his volume possesses more unity than can be found in the studies published in the *Cambridge History of British Foreign Policy*, it nevertheless sometimes suffers from his tendency to include so much detail that the essential lines of British foreign policy are not as clearly etched as might be wished. On the other hand, the volume, although written in beautiful prose, will be difficult reading for many because of the author's assumption of a wide historical knowledge on the part of his readers. The paradoxical result is that the general reader will find that too much detail sometimes hampers him in obtaining a clear picture of the sweep of British foreign policy, while too little detail about persons and minor events referred to incidentally in the narrative sometimes leaves him at a loss.

Aside from this criticism, however, the book is admirably written and fills a genuine need. The principal protagonists—Castlereagh, Canning, Metternich, Palmerston, Louis Napoleon, Queen Victoria, Princess Lieven, Salisbury, and others—are clearly delineated, less through thumb-nail sketches than by a skillful method of working them, their hesitations, the gradual evolution of their characters and policies, into the warp and woof of the narrative. The histories of the Eastern Question, of Palmerston and the *Risorgimento*, of the return to isolation after the Congress of Berlin, of *entente* and *détente* with France, are similarly evolved from the documentary sources until British policy—not always crystal clear—gradually emerges.

Dr. Seton-Watson's appraisals of men and events are almost uniformly calm and dispassionate, and display the moderation of a mature scholar. The author indicates some bias in his treatment of the truculent Palmerston, but he is careful to concede Palmerston's great abilities and his essential grasp of national currents in Europe. Dr. Seton-Watson's thoroughly British analysis of German policy preceding 1914 and his estimate of Sir Edward Grey are perhaps more open to question.

Dr. Seton-Watson is thoroughly convinced that isolation is no policy for England. In the past, isolation has always made possible a coalition of Continental powers against Britain, and even though she has been attacked by no such coalition, isolation has endangered her colonial holdings and threatened her interests in the Near and Far East. On the other hand, no mere slavish acceptance of the balance of power principle is always desirable. Britain has not hesitated on occasion to upset the

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balance of power by aligning herself temporarily with the strongest Continental group. One thing, however, the British Foreign Office has consistently opposed: the hegemony of any one Power in Europe. "For her the real test was whether that Power sought to add naval to military superiority. To possess an infinitely stronger army than the British did not necessarily constitute a danger or prevent friendship; to supplement this by decisive naval power meant to endanger, in the most literal sense, the very existence of the Empire and the independence of these islands" (p. 646). Similarly, in the Mediterranean and the Near East the essential aim of British foreign policy has been to prevent any one nation from threatening the sea or land communications of the British Empire.

The erudition, the sound historical method, the moderation and maturity of judgment displayed by Dr. Seton-Watson in *Britain in Europe* make this volume indispensable to students of British and Continental foreign policy.

HERBERT W. BRIGGS.

Cornell University.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

Not only is significant, previously-published material conveniently assembled in Harrison Boyd Summers' *Unicameralism in Practice; The Nebraska Legislative System* (Reference Shelf, Vol. XI, No. 5. H. W. Wilson Co., pp. 294, $2.40), but much new material is included, in part from manuscript supplied by Nebraskan senators, but principally by the "compiler" himself. Particularly informative are his analyses of action on bills by the senate, their consideration in committees and on the floor. Abundant statistical data provide bases for arguments pro and con. Does the unicameral body act too speedily? It passed a higher proportion of the bills introduced than had the state's bicameral legislature in its last ten sessions, but 40 per cent fewer were introduced. The average of one hour for debate and amendment on the floor for each bill enacted "is probably no less than the total time given to the average bill enacted in a bicameral body, and possibly considerably more," Professor Summers cautiously suggests. In this time, 86 per cent of bills were amended at least once, 59 per cent at two or more stages, 27 per cent at three or more, and 9 per cent at all four stages of consideration. The percentage of bills amended is more than three times as great as the median of second-chamber amendments in some 20 sessions of bicameral legislatures on which comparative data are available. When these 228 much-amended bills were on final passage, 48 per cent received no dissenting votes and 67 per cent drew not more than three votes against passage. The compiler

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is usually careful to supply facts which some of the writers who are quoted have overlooked, but he did not do this when including conflicting statements as to the cost of the session (pp. 130, 147, 151, 155, and 173). The results of Nebraska's brief experiment, reported in this volume, indicate that those interested in unicameral legislatures for other states should seriously consider modifications in the system, notably with respect to size, party affiliations of members, more frequent meetings, and a legislative council.—HOWARD WHITE.

Reorganization of the Supreme Court (Reference Shelf, Vol. XI, No. 4. H. W. Wilson Co., pp. 326, $0.90), is a handbook for debaters in which Julia E. Johnsen has compiled expressions of opinion both for and against President Roosevelt's defunct plan to reorganize the Supreme Court, along with an outline summary of arguments, an extensive bibliography, and a few well-chosen excerpts dealing with general aspects of judicial review. An able array of talent is assembled in support of the reorganization proposal, but most of the negative arguments against the plan consist of the usual twaddle about the danger of tampering with the "guardian of our liberties" lest the kind munificence of judicial oligarchy be replaced with the horrible vagaries of government by the elected representatives of the people. After hearing the negative arguments, bourgeois debate judges doubtless would feel constrained, as patriotic citizens, to render a unanimous verdict against the misguided supporters of the affirmative position. However, if people must debate, it seems that the important question to consider in this connection is not whether the President's reorganization plan *per se* was good or bad, but rather whether federal and state judges shall be permitted to exercise a continued power to act as final arbiters of the wisdom of social policies launched by our legislative bodies. To debate the merits of the President's plan without considering the future desirability of judicial review itself seems quite as futile as pulling the wings from one mosquito to rid the swamp of malaria. And it may just as well be true that there is little point to argument about judicial review unless one brings into consideration the whole character of the law-making process under capitalism. —ALDEN L. POWELL.

In studying the causes and solutions of the financial difficulties which so many of our railroad companies are facing at the present moment, much light is shed on the earlier financial history of the railroads by E. G. Campbell's *The Reorganization of the American Railroad System 1893–1900* (Columbia University Press, pp. 357, $4.50), in which the effects of the depression of the nineties are analyzed and the beginnings of the new era in financial organization are traced. Of special interest are the

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chapters dealing with Morgan's reorganizations, the Morgan-Hill alliance, and Harriman's transcontinentals. While the depression was the immediate cause of many of the receiverships, the basic cause in almost every case of failure was a combination of financial weakness and mismanagement. On the other hand, certain railroads, of which the New Haven was one, "emerged from the depression with larger and financially stronger systems than they had in 1892." The reorganization pattern for bankrupt companies was for the most part uniform, and is the same that the reorganization committees are prescribing at the present time: reduction of fixed charges, reduction in interest rates, exchange of fixed interest bearing bonds for contingent securities. There is this difference, however: under our present reorganization or bankruptcy statute, a conscientious effort is made to keep the cost of receivership and reorganization proceedings down to a minimum. The author is right in saying that the reorganization work of the nineties laid the foundation for the consolidation movement which followed. In like manner, the reorganizations of the present day may presage consolidations on an even grander scale in which the government will play a prominent part.—HENRY R. TRUMBOWER.

In his *Personnel Administration in the Federal Government* (Brookings Institution, pp. 62, $0.50), Lewis Meriam discusses the proposals for change in the structure and functions of the United States Civil Service Commission made by the President's Committee on Administrative Management. He has little quarrel with the objectives set forth in the Committee's report, but differs radically on the measures proposed for their accomplishment. He is particularly opposed to the abolition of the Civil Service Commission and the substitution of a single personnel administrator. The criticisms of the Commission he dismisses as ill-founded; most of them, he thinks, would be answered if the work of the Commission were adequately financed. Increased centralization he views with alarm. An alternative program consisting of seven specific suggestions closes his lucid and convincing discussion. Most novel among these is a proposal for the creation of a Federal Personnel Board consisting of the personnel officers of the various departments and independent establishments—entirely apart from the Civil Service Commission, separately financed and staffed for research and advice to the President and Congress on personnel problems. Mr. Meriam's long and intimate contact with many branches of the federal government service entitles his views to thoughtful consideration by Congress and by those responsible for improving personnel administration in the federal government.—HARVEY WALKER.

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H. Dewey Anderson's *Our California State Taxes; Facts and Problems* (Stanford University Press, pp. viii, 305, $2.75) analyzes and criticizes the existing tax system in California from the progressive point of view. The first chapter contains an interesting history of accretion of state functions, similar to that which Upson made for Detroit. The point is made that these activities have resulted from popular demand, that they are socially desirable, and that expenditures for them will continue to be demanded. The state tax system is largely regressive, the retail sales tax contributing over 50 per cent of all general fund revenues. Factual data are presented to show that the burden of taxation is comparatively light on the rich and heavy on the poor. The personal net income tax contributes only five to eight per cent of general fund revenue. California has not levied a state general property tax for over a quarter-century. The work is well written and scholarly in form. The footnote citations seem adequate and appropriate; while statistical tables and charts present quantitative data to back up the conclusions. The book should be of interest to students of taxation outside of California. Because it blasts many reactionary shibboleths regarding taxation, it will not prove too palatable in ultra-conservative quarters.—JOHN M. PFIFFNER.

Parkways and Land Values (Harvard University Press, pp. 135), by John Nolen and Henry V. Hubbard, was undertaken originally by Mr. Nolen and Mr. Hubbard, but was rewritten after the death of the former. It is Number 11 of the Harvard City Planning Studies, which have dealt largely with specific problems of public planning. The writers have discussed courageously the controversial question of measuring the socially created values that sometimes accompany public improvements—in this instance, parkways, defined as "an attenuated park with a road through it." The parkways of Metropolitan Boston, Kansas City (Mo.), and Weschester county, New York, were taken as cases in point, with a check on conclusions made in several other communities. Incidentally, the volume contains corollary expositions of administrative organization and powers of park authorities and a discussion of parkway design, this last subject illustrated by several sketches and plates. It is axiomatic that with proper location parkway development will enhance abutting and adjacent land values. Measuring such enhancement with a view to the special assessment of benefit involves difficulties of which the authors are entirely aware. The data presented are convincing on the first point, but would be more helpful on the second had they extended beyond 1925 and 1932 and into a period of serious deflation of real estate values. The authors draw the conclusion that ". . . it is impossible by an arithmetical process to state exactly what the income through taxes is which is really caused by the constructed parkway. . . ." Evidently we are still a long

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way from the formulation of rules for the assessment of special benefit taxes comparable to those used for the assessment of general property taxes.—LENT D. UPSON.

Addressed to the specialist in early American political and legal institutions, S. G. Nissenson's *The Patroon's Domain* (Columbia University Press, pp. x, 416, $3.75) is a careful, highly detailed, and technical study of the New York patroonship in the seventeenth century. Since 319 of the 352 pages of text deal with Rensselaerswyck, the treatment of that estate is so comprehensive as to be definitive. A reference work rather than a book merely to be read, it follows the pattern of earlier studies made at Columbia under Osgood, and reflects Osgood's view that law is the basic element in human society. Preceded by two brief chapters on the Dutch West India Company and the inauguration of the patroon system, the elaborate discussion of Rensselaerswyck revolves around three main subjects: (1) land law and land tenure; (2) political organization and administration; and (3) the relations of the estate to the Dutch West India Company, to New Netherland, and to the English government, 1664–1685. The book will be useful for any study of the process of investment which established in America the social and economic inequalities of Europe.—CURTIS NETTELS.

In *James Madison: Builder* (Wilson-Erickson, pp. 366, $4.00), Abbott Emerson Smith provides "a new estimate of a memorable career" which will be of considerable value to students of American government. This concise and well-written biography of the "Father of the Constitution" is obviously the product of careful research and long reflection. To protect property rights endangered by state democracies, Madison aided greatly in the establishment of a strong central government which, by balancing numerous factions against each other, would operate as a "neutral sovereign." When Hamilton used this government mainly to serve the "moneyed interest," Madison, from the House of Representatives, developed our first "opposition." By affirming greater loyalty to the constitution than shown by Hamilton, he made possible the operation of party government in the United States. The doctrine of "strict construction" was never fundamental with Madison. This protest against Federalist rule, even when carried to its extreme in the Virginia Resolutions, was not intended to encompass nullification or secession. While the bookish Madison laid the theoretical bases for opposition, Jefferson supplied the necessary political leadership. Madison's later services as secretary of state and president revealed his failure fully to comprehend vital historical forces. Neutrality failed internationally, just as his concept of the federal government as a powerful arbiter between contesting factions

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yielded to the growing hegemony of commercial and industrial forces within the country. Before his retirement, "the American government had already left the Constitution behind, though adhering to its verbal precepts."—O. R. ALTMAN.

FOREIGN AND COMPARATIVE GOVERNMENT

The historians of French electoral systems have in the past centered their attention mainly upon the problems of suffrage and representation and have neglected the equally important question of the administration of elections. This *lacuna* has now been filled for the period 1830 to 1848 by Sherman Kent's *Electoral Procedure under Louis Philippe* (Yale University Press, pp. 264, $2.50). This exhaustive study of the material in the French National Archives and in contemporary newspapers replaces Alexandre Pilenco's *Les Moeurs electorales en France; Régime censitaire* (Paris, 1928), which treated the electoral customs of the Restoration much more thoroughly than those of the Orleanist Monarchy. In Mr. Kent's book the reader will find not only an excellent account of the origin of the 1831 electoral law, but also a most enlightening chapter on the taxation system under Louis Philippe—a chapter which is absolutely essential to the understanding of the politics of the time. The author brings out clearly how the landed bourgeoisie and aristocracy were favored by the qualified suffrage at the expense of the manufacturing and commercial interests through the extremely heavy direct taxes on land. Other factors in electoral procedure, such as the registration and voting process, are discussed thoroughly, and the reader sees clearly and in detail how this system of elections made possible the improper electoral tactics of the government and how it created tremendous difficulties for the opposition. To the historian, this book is of great value in that in the future he will not have to use samples to illustrate the electoral corruption at the time of Louis Philippe, but can point out systematically specific parts of the electoral procedure which permitted the party in power to influence the outcome of the elections. To the political scientist, Mr. Kent furnishes an historical background for the origins and the necessity of the existing safeguards against corruption in elections and also a reminder of the evils which might result from too great confidence in the honesty of a bureaucracy. It is fortunate that the author intends to use his thorough knowledge of electoral procedure for a study of the influence of this system of elections on the political development of France.—RUDOLPH A. WINNACKER.

India is not politically the world's hottest spot at this moment, but it is seething and smoldering in fire of discontent and unrest. The grant of the new constitution is manifestly an attempt to win over the rebellious

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India. Is the Indian nation now satisfied with this latest installment of self-government? And how does it work? It is with the latter question that G. N. Joshi's *The New Constitution of India* (Macmillan and Co., pp. xviii, 464) is primarily concerned. Undoubtedly the most striking feature of the constitution is the creation of the All-India Federation. Mr. Joshi, who is professor of constitutional law in the Government Law College of Bombay, discusses at some length how the various provinces of British India and the semi-independent, feudally ruled princes' states are to be welded into one federated structure. He goes into details and tells how the federal executive, the federal legislature, and the provincial legislature are created, and what their political and financial powers are. He also devotes, throughout the volume, short historical sketches to the subjects discussed in order to furnish necessary background. Although the author seems to be cautiously optimistic, it remains to be seen how a system under which the democratically elected representatives of Indian provinces, checkmated by the autocratic princes, can function satisfactorily. Professor Joshi is scholarly and objective, perhaps a bit over-legalistic; but he is constrained to say that the London-made constitution is "not a natural constitution." In his own words: "Indians look upon the New Constitution as an imposed Constitution which is incapable of growth from within. It is encompassed in a strait-jacket."—SUDHINDRA BOSE.

Studies presented in a seminar at George Washington University in 1936 by six authors, and assembled by A. Curtis Wilgus in *South American Dictators* (George Washington University Press, pp. viii, 502, $3.00) make easily available to students information on the long-standing institution of Latin American dictatorship. The chapters vary greatly in character, from brief sketches based on the scanty information available for the less important leaders to better documented portraits of leading figures in South American affairs. The contributors vary in method of treatment of their subjects. In some cases, the discussion is confined to factual analysis; in others, the author, in interpreting his findings, discovers much to palliate if not to justify the acts of the person discussed; in still others, deference to American opinion leads to emphasis on the indefensible character of all dictatorships. The sketches of some of the leaders, especially those of Bolivar and San Martin, who have been so often eulogized by Latin Americans, leave them both much less admirable figures than the public has heretofore believed them. In not a few of the chapters, there is a looseness of style which blurs the outline of the picture. Clarity is sacrificed also in the cases of men active in more than one area by making the discussion turn on geographical units. In spite of these limitations, the book is useful. There is no other single volume which gives a comparable survey. The analysis of the

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methods adopted by the dictators to establish themselves, their strengths, their weaknesses, and their accomplishments, furnish both parallels to the present-day dictatorships elsewhere and contrasts with them. The latter are the more striking. The new world dictatorships, in fact, have so many points of difference from those in the other hemisphere that they often appear different phenomena. Latin American dictatorship is an institution which is still imperfectly understood and deserves further study. It is to be hoped that this survey will be followed by more detailed analyses and appraisals.—CHESTER LLOYD JONES.

In revising his *Government in the Third Reich* (McGraw-Hill, pp. viii, 199, $1.50), Fritz Morstein Marx has rewritten little of the text of the 1936 edition, but has added certain new sections. Among these, "Regimentation and Diversity," "The Fun of Being in Business," "The Four-Year Plan," and "The Third Reich's Foreign Policy" do much to complete the picture. There has also been some rearrangement of chapters. An account of the historical development of an independent civil service and of a system of local government is worked into the description of the government of the Empire and the Republic with skill and insight, and deserves special recognition. Emphasis is laid upon the large part which executive leadership has always played in Germany. Although the democratic leanings of the author are evident, his account is eminently fair, and he does not hesitate to give credit when credit is due. Occasionally more definiteness might be desirable (as on the rise of Hitler's party), but on the whole there has been wise selection of detail. The book makes an excellent but not a routine text, and it sets a high standard for future volumes in the series of "McGraw-Hill Studies in Political Science" which are to appear under the general editorship of Professor Marx.—E. C. HELMREICH.

Among many clauses in American unemployment insurance laws taken from the British act is the disqualification from right to benefits of workers who are unemployed as a result of a labor dispute. This clause, which occurs in all but three states, has recently drawn the fire both of the American Federation of Labor and the Committee for Industrial Organization. This labor opposition and the fact that benefits are now or will soon be payable in all states renders very timely the study by Peter T. Swanish, who is the administrator of the Illinois Unemployment Insurance Act, on *The Trade Disputes Disqualification Clause under the British Unemployment Insurance Acts* (University of Chicago Press, pp. ix, 73, $1.00). Refraining from expressing any opinion on the justice or wisdom of the clause, Swanish carefully analyzes all decisions of the umpire in the British unemployment insurance which interpret the trades dis-

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putes disqualification. This analysis should prove very valuable to the administrators of the American laws, and merits careful study by all who would eliminate or modify this disqualification.—EDWIN E. WITTE.

Hilda M. Neatby's study, *The Administration of Justice under the Quebec Act* (University of Minnesota Press, pp. 383, $6.00) is doubtless a valuable contribution to historical research. But, through no fault of the author, it furnishes very little grist for the mill of the political scientist. Even her hope of condemning or vindicating the Quebec Act was largely frustrated by the complexities of a situation in which an English government attempted to administer a garbled and uncertain version of French law through the instrumentality of judges of uncertain ability and slight legal training and subject to the lay direction of military governors more concerned with protecting the colony from invasion than with perfecting a legal system.—J. ROLAND PENNOCK.

INTERNATIONAL LAW AND RELATIONS

At a time when the world wonders why the Vatican praises Mussolini and criticizes Hitler, supports Franco and condemns the *Action Française*, the publication of William Teeling's *Pope Pius XI and World Affairs* (Frederic A. Stokes Company, pp. vii, 312, $2.50) seems especially opportune. The Anglo-Irish author is strongly opposed to the direction of the Holy Father's mundane policies. He sees him as an intensely patriotic Italian who considers Mussolini his greatest support against Bolshevism, with which he came into such close contact when serving as the first nuncio to a resurrected Poland. Il Duce, in turn, is shown as playing up to the Church enough to get its support, at home and at times even internationally. While Mr. Teeling, in a manner characteristic of his approach to the subject, dedicates his book "To those Catholics who have faith in the future of Democracy," he depicts the head of his Church as "autocratic" and fearful of the growing influence of the New World in general and the United States in particular; the latter partly because of her strong financial influence—contributing for the upkeep of the Holy See about as much as all other nations combined—and partly because of a fear of an American brand of Gallicanism. The author feels further that the Pope's attitude on the Italian conquest of Ethiopia has dealt a great injury to Catholicism, but he is also sure that the Catholic Church could be an influence to strengthen democracy, as shown by the indignation, for instance in Australia and New Zealand, at the development of Naziism and Fascism in Europe, and especially at the treatment of the Catholic Church in Nazi Germany. Other parts of the book describe the election and coronation of a pope, Vatican administration, Pius XI as a scholar, librarian, diplomat, and mountain climber, and his attitude

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toward various countries. A short chapter on "The Rota and Divorce" is thrown in, although it has no connection with the topic of the book. One looks in vain for a discussion of the influence of the revision of canon law in 1917 as a strongly centralizing force, and of the rôle of the papal newspaper *Osservatore Romano* in international affairs. The style is journalistic but, on the whole, the facts are given accurately, and the book can be recommended as an introduction to an important phase of international affairs which is usually overlooked in our text-books. There seems no doubt that the author expresses the feelings of many Catholics who find themselves at odds with the Pope when it comes to politics, especially in recent times. It is significant that an obviously devout Catholic should bring out this volume in an apparent attempt to express a protest and to exact a counteracting influence against what he considers detrimental to the best interests of his church.—JOHN BROWN MASON.

The course of a nation's foreign policies is affected vitally by calculations as to the probable outcome of a trial by arms. Too few studies exist, on individual countries, of the factors which must enter into such a reckoning. Now Shelby Cullom Davis partly supplies this deficiency as regards France in his book on *The French War Machine* (London: Allen and Unwin, pp. 221, 8s. 6d.). The primary difficulty confronting a student of war potentials is in establishing his limits of investigation. Mr. Davis properly fixes his focus on military policies, techniques, and organization. He gives an adequate, non-technical treatment of the changing phases of French policy and administration with regard to conscripts and their length of service, the regular army, the use of colonial troops, and the air force. In addition, he wisely considers important phases of war potentiality which are not strictly military: the population problem, and the availability of strategic raw materials (although this needs supplementing by a treatment of industrial equipment and location). Further chapters point out that Frenchmen do not take kindly to military regimentation, marching 'leagues of youth," and the sort, nor would Parliament enact a drastic proposal in 1927–28 for national mobilization in war-time. The actuality of war, of course, brings out other qualities, but it is manifest that fascist training and organization affords a superior advantage in the early stages of conflict. The periphery of Mr. Davis' subject reaches into every phase of French political, economic, and social life—the total capacity of the nation for armed conflict. It even extends beyond, since this capacity is relative to that of others. On the whole, he has shown good judgment in selection. He concludes that the French army (in Europe) of 400,000 could withstand an attempted German invasion of much superior numbers until British aid arrived, but that there is slight probability of a successful French offensive in defense of Czechoslovakia. The

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implications of this fact for France's diplomatic position in Europe today are obvious.—WILLIAM P. MADDOX.

As is explained in the prefatory note, *Background of War* (Alfred A. Knopf, pp. xvii, 296), by the editors of *Fortune*, presents in book form six articles published between March and August, 1937, in that magazine. The purpose of the articles was to discover, by an examination of six "*foci* of fear," whether the prevalent fear of war was justified. These *foci*, dominant developments or conditions in certain states rather than the states as such, are British foreign policy, the struggle in Spain, the domestic pressures in Germany, the popular front government of France, the new armaments developed since the World War, and militarism in Russia. As for British foreign policy, the authors describe the ambiguous backing and filling, the inconsistencies, and the retreats of the past several years, but believe that the British people as a whole have finally determined to secure peace by organized defense against aggressors. The war in Spain, with all its international implications, is explained as a product of Spanish history—the history of the attempt of a great people to "free itself from the crushing weight of the ruins of its feudal past." Hitler's Germany the authors tend to deflate. The stock explanations for Hitler's rise are offered, but in addition certain others are given, such as the yearning of the individual German both to obey a leader and to command an "inferior." The popular front in France is pictured, not as a prelude to Marxism or even to revolutionary policies, but rather as the mobilization of France against the fascists, with a trend toward the Right when the fascist crisis inside France has passed. As for Russian militarism, the authors are inclined to accept the proffered explanation from Moscow that the only motive is defense against a threatened attack by fascist states. Taking all these situations into account and analyzing them in the light of the apparent fact that recent technical developments in armaments do not favor the aggressor, the authors are inclined to conclude that the immediate outlook is peace—"with variable winds." The volume is stimulating and balanced.—CHARLES A. TIMM.

In her *French Indo-China* (Macmillan Co., pp. 517, $5.00), Miss Virginia Thompson interests herself primarily in the psychological and sociological problems created by Western rule. She describes in considerable detail the characteristics of the various races of Indo-China and their economic and political institutions prior to the French conquest and the disruptive effect of French rule. Students of colonization will not be surprised to learn that the greatest solvent of Indo-Chinese modes of thought and life has been the creed of individualism inherent in Western

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education and behavior, more than any positive action of the government to alter or destroy native institutions. Other chapters describe the character and aims of the French official and unofficial community and the distinctly limited social intercourse between them and the Indo-Chinese. Miss Thompson deals faithfully with the French record, which is in many respects unedifying. She has no illusions, however, as to the moral and intellectual qualities of the natives and points out that their worst oppressors are their wealthy or powerful fellow-countrymen. This observation again can be paralleled by the situation in, e.g., India or British Malaya. The account of the Nationalist and Communist movements with which the book closes is disappointingly brief. About a quarter of the volume deals with the economic situation—native and European agriculture, mining, the condition of labor, the problem of rural debt, and the important position held by the Chinese. The history of French rule, with its constant changes of policy, is summarized in about forty pages; but owing to the brevity of the account no clear picture is given. The absence of a description of the contemporary structure and policies of the French colonial government makes it difficult for those who are not students of Indo-China to understand the present situation. The book suffers also from lack of clarity and faulty arrangement; and while it contains a great deal of useful information, the reader must often collect and rearrange this for himself. One wishes, for example, that the several incomplete accounts of the medical, agricultural, and other social services had been brought together into a coherent whole. The absence of footnotes makes it impossible to check the statements; but there is a brief index and an adequate map. Despite its imperfections, the book is a useful addition to the limited number of works in English upon Indo-China.—LENNOX A. MILLS.

The leading article in an invaluable annual, *The British Year Book of International Law, 1937* (London: Oxford University Press, pp. vi, 282, $5.50) is by Professor Charles Cheney Hyde, and supplies a readable and succinct review of the more important cases decided by the Supreme Court in which it has expounded principles of international law. In commenting on the decision of the Court in the case of Oetjen v. Central Leather Co. (246 U.S. 297, 302), the writer doubts "whether international law as such prescribes the rule of retroactivity" which the Court laid down in regard to the recognition of a new government. Discussing "Some Problems of the Spanish Civil War," Professor H. A. Smith criticizes severely the effects of the Stimson doctrine of non-recognition. He admits the political difficulties present in the case of this civil war, but feels that the disregard of what he calls the classical and correct view and the adoption of this "transatlantic heresy has been to create in the

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popular mind—and not only in the popular mind—the impression that the grant of recognition is necessarily an act of partisanship, implying some kind of approval or support to the government recognized." After stating in regard to the Spanish civil war that to his mind "it is one example of the general undermining of the principles and the authority of international law which is one of the most disquieting features of the present day," he concludes: "The law of nations, as it has been understood for centuries, is a law between independent states which acknowledge no earthly superior. For these reasons, it does not rest upon any visible human authority and cannot be supported by physical power. Its basis, therefore, must be moral and spiritual, and such a basis presupposes some measure of agreement upon fundamental principles. Unless some such agreement upon principles can be restored, the outlook, as I see it, is dark indeed, for the structure cannot stand if the foundations are destroyed." In addition to the usual notes, decisions, and reviews, this number of the *Year Book* contains articles on "The Law of Domicile," by J. H. C. Morris; "The Influence of Huber's *De Conflictu Legum* on English Private International Law," by D. J. Llewellyn Davies; "Proper Law and Illegality in Private International Law," by F. A. Mann; "The International Status of the Free City of Danzig," by Ian F. D. Morrow; and "Custom as a Means of the Creation of International Law," by Lazare Kopelmanas. It also contains "The Treaty of Alliance Between His Majesty in Respect of the United Kingdom and His Majesty the King of Egypt."—ELLERY C. STOWELL.

In the Arnold Foundation Studies, Vol. V, No. 3, Howard B. Calderwood presents a concise and admirable review of the development of *The Higher Direction of the League Secretariat* (Southern Methodist University, pp. 31). The title indicates that the study is restricted to the evolution of the offices of the secretary-general, the deputy secretary-general, and the under-secretaries-general. This evolution occurred in two stages, the second of which is still in process. The first may be called the period of establishment, on the basis of the Balfour and Noblemaire reports. The second is that of dissatisfaction with the results of the application of the principles defined in those reports as applied up to 1928–29. One reason for dissatisfaction was the monopoly of the higher offices by the Great Powers. Another was what was felt to be an undue concentration of power in the hands of the secretary-general. Such steps as have been taken to lessen this dissatisfaction are indicated by Professor Calderwood, but the conclusion is reached that the question will need to be reopened in connection with that of amendment of the Covenant. *The Basic Processes of International Government* are similarly reviewed by Charles A. Timm and S. D. Myres, Jr. (Arnold Foundation Studies in

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Public Affairs, Vol. V, No. 4, pp. 42). The former limits himself to methods of pacific settlement of international disputes. He states the methods and reviews the trends, but gives no description of how or under what circumstances each may be employed. The work of the Permanent Court is not even given a nod of recognition. The second author deals with international administration as one of the basic processes. The treatment, given the same limitations of space, is much more adequate from the standpoint of description and also of analysis.—HAROLD M. VINACKE.

Robert D. Gregg's *The Influence of Border Troubles on Relations Between the United States and Mexico, 1876–1910* (Johns Hopkins Press, pp. 186, $2.00), covers the border relations during the Diaz régime. The author treats fully the struggle of Diaz for recognition by the government of the United States. Then he traces the development of the border problems of the period, which grew largely out of cattle rustling, smuggling, filibustering expeditions, and Indian forays. Although the work deals with these highly colorful and romantic realities of life in the Southwest in the days of Billy the Kid, Wyat Earp, Geronimo, and the Texas Rangers, it is very respectably scholarly, being based strictly upon documentary sources rather then legend. There may be occasional evidences to the Southwesterner of the author's apparently complete reliance upon documents and papers at a great distance from the region. There may be a lack of wholesome and helpful local color, such as might have been added by some personal interviews with old-timers on the border, or even by use of the files of Southwestern newspapers. But the matter seems to have been as authentically treated as possible on the basis of books, Mexican and American documentary evidences, and manuscript sources which are available in Washington and elsewhere in the East. The book makes available the fruits of an excellent piece of research on a subject long neglected by writers of authentic history.—N. D. HOUGHTON.

The Origins of American Intervention in North Russia (Princeton University Press, pp. ix, 140, $2.50) are found by Leonid I. Strakhovsky to have been the result of a well-meant but poorly managed endeavor to reconstitute the Eastern front and prevent German control of the strategic Russian White Sea area. The author, who was connected with the Murmansk Soviet during the period, points out that the first Allied forces landed at Murmansk at the request of the local soviet and with the approval of Moscow. Lenin and Trotzky hoped thereby to stop Finno-German control of the region, while at the same time counting on German pressure to check any ulterior designs of the Allies. The treaty of Brest-Litovsk and subsequent German pressure stopped Moscow's policy of playing the enemies against each other. The Allies were ordered out of the

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Murmansk-Archangel area, but in their own interest and at the request of the Murmansk soviet refused to leave. The American part in the intervention arose through a desire to get Russia back into the war and through a request for aid from the Murmansk "people's government." For these reasons, and because American participation really aided Moscow by preventing the fruition of an Anglo-French plan to dismember Russia and also helped Russia to denounce the bitter peace of Brest-Litovsk, Strakhovsky concludes that the U.S.S.R. has no valid claim for damages against the United States. The study is exceedingly well supported by documentary evidence.—WILLIAM J. RONAN.

The substance of his lectures during the past five years at the summer session, at Ann Arbor, Michigan, of the Carnegie Endowment's Division of International Law is contained in George A. Finch's *The Sources of Modern International Law* (Washington: The Carnegie Endowment, pp. 115, free on application to the Secretary). This constitutes a fortunate choice for Number One in a Monograph Series of the Endowment. The monograph covers the factors which have contributed to the growth of international law, with a definition, illustration, and evaluation of the sources: natural law, modern text-writers, custom, treaties, and court decisions, both municipal and international. There are probably few who will quarrel with this book. It has the unusual merits of brevity combined with clarity, critical choice of material, and a direct attack upon the subject at hand. The volume too, will have value for various persons. It should be of great help to the graduate student in the special field of international law and might well be the starting-point for discussion of graduate work in the field. Those interested in the field of international relations who feel somewhat uncertain about the nature of international law will gain enlightenment without a fear that they are being indoctrinated or misled. Those who assert that there is no such thing as international law might well examine the monograph before passing into history as exponents of the proposition.—CHESNEY HILL.

In his introduction to *Labor in Canadian-American Relations* (Ryerson Press, pp. xxxviii, 212, $3.75), Dr. H. A. Innis, of Toronto University, editor in Canada of the economic volumes in the Carnegie Endowment series on Canada and the United States, surveys compactly the various international relations of labor during the past two centuries (pp. v–xxxi). Utilizing materials already familiar to students in the field (among them his own several notable works), Professor Norman J. Ware, of Wesleyan University, then traces "the structural problem of labor organization," in "The History of Labor Interaction" (pp. 1–72). Professor H. A. Logan, of Western Ontario, employing 20 tables and 30 charts newly devised for

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the purpose, and utilizing in large part data from the boot and shoe, cane sugar refining, agricultural implements, and motor car industries, analyzes statistically, "the problem of the standards of living," in his "Labor Costs and Labor Standards" (pp. 73–205). Both studies are largely confined to "similar industries in the United States and Canada, chiefly in the highly industrialized St. Lawrence region." (Studies of standards in other industries and regions are being published elsewhere, p. v.). Each study is replete with evidence in support of Innis's observation that since colonial days Canada has been faced with the necessity of taking measures in defense of her economy, cultures, and attachments against the consequences of an expanding American economy. Unfortunately, part of the cost of those measures is in terms of a lower standard of living for Canadian labor (chart 27). Excellent select bibliographies follow each study, but the page references in the lists of tables and charts are in error.—HENRY REIFF.

In Russia and the Balkans, 1870–1880 (Clarendon Press, pp. 724, $10.00), Mr. B. H. Sumner covers in a sense familiar ground. In recent years, W. L. Langer of Harvard, R. W. Seton-Watson of the University of London, and David Harriss of Stanford have published solid historical works dealing with this region in this decade. The book under review, however, makes a distinct contribution to the subject. As the title indicates, the author emphasizes more than other scholars the motives, actions, and policies of individuals in a position to influence Russian foreign policies. In addition, he has been singularly successful in avoiding a purely diplomatic treatment of the subject by a revealing presentation of the military, political, and social events which accompanied the diplomatic manoeuvers. In preparation for his task, he has fully exploited British official documents, the printed materials in western European languages, and books and journals in the Russian language. He has not had access to the Russian archives.—C. P. HIGBY.

In *The Annexation of Bosnia, 1908–1909* (Cambridge University Press, pp. viii, 264, $3.75), by Bernadotte E. Schmitt, we have reconstructed and interpreted for us by an American master of pre-war diplomatic history one of the most important crises of the period. With penetrating imagination and vast knowledge of the ways of diplomats, he recreates for his readers the advance and retreat, the thrusts and parries of the six contestants in the various diplomatic episodes which together constituted the Bosnian crisis of 1908–09. From his study of the documents he concludes that both Aërenthal and Izvolsky miscalculated badly and that, while the German powers won a notable diplomatic success, it was in reality a Pyrrhic victory for Germany and Austria-

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Hungary. The author is in substantial agreement with, and has a high regard for, *La crise bosniaque* of Momtchilo Nintchitch which appeared last year.—C. P. HIGBY.

To any one desirous of knowing what was written, of a scholarly character, during the year 1936 in the field of the social sciences, law, art, and literature pertaining to Latin America, the *Handbook of Latin American Studies, 1936* (Harvard University Press, pp. xv, 515), by a number of scholars, will be invaluable. In addition to the very complete bibliography of books and articles arranged topically, and often subdivided according to countries, the volume includes a number of special articles pertaining to research projects and archival material in various Latin American areas. Over 3,000 items are listed, not including articles and notes. A similar volume is to be published annually. The series should make an exhaustive bibliography.—GRAHAM H. STUART.

In preparing *Foreign News Sources and the Foreign Press; A Bibliography* (Mimeo., Burgess Publishing Co., pp. ii, 124, $1.75), Ralph O. Nafziger has rendered a valuable service not only to students of journalism but to all students of the functions of the press in modern society. The work lists, topically and with reference to countries, titles of books, pamphlets, and articles found in popular, trade, and professional magazines. It includes a few pertinent governmental and League of Nations publications; emphasizes materials which can be found in well-stocked American libraries; and omits repetition of citations in such bibliographies as those by Lasswell *et al.*, Bömer, and Löwenthal.—HENRY REIFF.

POLITICAL THEORY AND MISCELLANEOUS

With the painstaking thoroughness commonly attributed to German scholars, Professor Goetz A. Briefs, in his *Proletariat; A Challenge to Western Civilization* (McGraw-Hill Book Co., pp. xviii, 297, $3.00), traces the descent of the hapless toiler from the Roman *proletarius* (one who begets children). The proletarian is explained in "socio-economic" and "ethico-psychological" terms, and his restlessness is attributed to a "yearning for the absolute," the "religious destitution" of his soul, and the diversion of his "metaphysical urge" from its "true and natural object, religion and theology," to purely secular considerations. "Proletarian" implies not merely a poor laborer, but one who recognizes that he can never be anything else, that though his *status* has become permanent, his *job* has not, that he and his fellows have a class interest opposed to that of their bourgeois employers, and has embraced a philosophy of *ressentiment*. The cleavage between proletariat and bourgeoisie, which is a product of laissez-faire capitalism, lies at the root of most of the antago-

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nisms in modern society. Paradoxically, the laborer, in an age that enshrines individualism, has had to resort to collectivism in order to defend his own individuality. Therein lies the "challenge to Western civilization." Occidental culture is rooted in the individualism of Christianity and the Graeco-Roman tradition, whereas proletarian philosophy is collectivistic. America has no genuine proletariat, but she seems to be developing one after the old-world model. The proletarization of the masses may lead to the class-struggle and communism; on the other hand, it may lead to nothing more than the growth of trade unions, coöperative societies, labor parties, and the enactment of social legislation. By implication, the author prefers the latter alternative, but does not consider it to be a wholly satisfactory solution. This book is thoughtful, stimulating, and objective, but unnecessarily repetitious, many observations and conclusions appearing in several different chapters in almost identical form. Furthermore, to an unimaginative reviewer, it scarcely seems necessary to explain a depressed laborer's *ressentiment* in socio-economic and ethico-psychological terms, or to ascribe it to a metaphysical urge, a yearning for the absolute, or the religous destitution of his soul.—ROGER V. SHUMATE.

Education's Own Stations (University of Chicago Press, pp. xiv, 481), by S. E. Frost, Jr., is simply a compilation of the history of broadcasting licenses issued to educational institutions. It represents a very commendable and reasonably successful attempt to crystallize for future reference the facts about broadcasting by educational institutions, most of which have abandoned the field, before these facts become lost or forgotten. It is an imposing record of the futility of educators in competition with the professional promoters of public entertainment. The volume contains no summary or attempt at drawing conclusions, but one interested in generalization from the evidence can find it tacked on as the last chapter of Mr. Frost's *Is American Radio Democratic?* (University of Chicago Press, pp. xv, 234, $2.50), whose seven earlier chapters are devoted to answering the question posed in the title. This they do by presenting in condensed form the more commonly known facts about the scientific basis of radio, attempts at its regulation in this country, the methods for its control employed in some other countries, and the part played by the station owner, the advertiser, the educator, and the public in making American radio what it is. This limited task is on the whole well done, although it is marred by too frequent use of the barbarous jargon of educational psychology. It will be interesting to political scientists to know that "a democratic society is one in which there is mutual intercourse of man with man and in which adequate provision is made for the reconstruction of social habits and institutions by means of wide stimula-

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tion arising from equitably distributed interests," and that one of the criteria of all democratic institutions is "that they function so as to enable all individuals to experience broad, wide, varied, and rich shared contacts with their physical environment and others." The author is satisfied to give a few illustrations of the attitude of the Communications Commission and its predecessor, the Federal Radio Commission, rather than a comprehensive analysis of their invasion of the prohibited field of censorship. His study shows clearly his lack of training in law and political science, nowhere more clearly than in his apparent ignorance of the origin of the phrase "public interest, convenience, and necessity." On the whole, however, the book is clear and realistic in its grasp of the radio problem—except, unfortunately, in its conclusion that the "way out" in America is government ownership under a commission "manned by individuals whose tenure in office is not dependent upon changes of political atmosphere and whose compensation is such as to free them from financial pressure." Even an educator ought to know better than to hope that such a body could be free from the taint of dictatorship. It is only fair to say that the author's preceding pages state clearly the dilemma of commercialized vs. government control.—THOMAS H. REED.

During the past several years, Labor in this country has been "on the march." Stimulated by a social philosophy which is concerned with a more equitable return to the worker, and assisted by a friendly political circumstance, Labor has been extremely active in securing new protective legislation and in modifying its own organization, programs, and techniques with a view to strengthening its position still further. In this day of widespread interest in labor problems, James P. Rowland's *The Legal Protection of the Worker's Job* (University of Pennsylvania Press) is of special pertinence. Written as a doctoral dissertation at the University of Pennsylvania, the purpose of the study is to determine the degree to which society has created legal safeguards of the worker's job under an employment contract for an indefinite period. In this connection, it should be mentioned that the worker is considered as an individual worker, as a member of a group of non-union workers, and as a member of a labor union. Various aspects of this subject have been treated in such books as Oakes, *Organized Labor and Industrial Conflicts* (1927), and Frankfurter and Greene, *The Labor Injunction* (1930); but these works are already out of date in some respects because of recent labor legislation. Moreover, while many articles are to be found in various periodicals, especially law journals, which deal incidentally with the problem of job tenure for the worker, no study has fallen into the hands of this reviewer which attempts to treat the matter in the comprehensive, systematic way attempted in this monograph. The plan of the study involves: (1) an investigation of

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the sources of interruption of job tenure; (2) a determination of the degree to which the worker's job is legally protected under collective agreements; (3) a consideration of the statutory attempts, federal and state, to create safeguards of job tenure; (4) an examination of the common law safeguards of job tenure with reference to the judicial regulation of the internal affairs of labor unions; (5) a study of the constitutional aspects of legislation affecting the job tenure of the worker; and (6) a summary of the statutory policies of foreign countries with respect to the problem of job protection (as incidental to this study). Each of the foregoing topics is considered carefully and with a view to a brief but clear statement of the findings arrived at. The net result is a very useful summary of the legal provisions which relate to the protection of workers' jobs in this country, brought up to date. An appendix presents a brief summary of foreign legislation and a well selected bibliography.—F. R. AUMANN.

The proceedings of the 1937 National Planning Conference, in which four organizations of professional planners participated, are now published in *New Horizons in Planning* (American Society of Planning Officials, pp. 178). The papers are well grouped about problems of varying territorial dimensions. The city receives first attention, with stress on the development of suburban and satellite areas outside the city's legal boundaries, the dependence of planning on coöperation of the city government, and the traffic problems of the "city of tomorrow." County planning experience in California, Oregon, Wisconsin, and New York is described in detail. The addresses on "A Critique of State Planning," however, have a less specific territorial application than the title would suggest. Regional planning is discussed by persons acquainted with developments in New England, the Pacific Northwest, and the Delaware Basin. In the national planning field, four key problems are discussed: national productivity, farm tenancy, declining population, and the transportation system. In addition to the papers on specific areal problems, the proceedings include several general addresses. "Planning," despite the soundness of its emphasis on an integrated approach to the problems of society, has exposed itself to the criticism that it lacks definite terms of reference, that it spreads itself thin over many fields in which other workers are more competent, and that its professional men pretend to omniscience and omnicompetence. *New Horizons in Planning* contains welcome evidence that planning is acquiring modesty, crystallizing its techniques, calling in specialists as consultants, and getting less utopian in emphasis as the problem of governmental adoption of plans receives belated recognition by the planners. These advances are significant enough partially to counterbalance the evidence in the book that planning still relates to everything from the salaries of corporation

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executives to reforestation, and from high-speed highways to methods of increasing the birth-rate.—J. W. FESLER.

For more than fifty years, the problem of monopoly has been before the people of the United States, and yet we seem to be no nearer a solution than we were in 1890. The way to begin is with detailed and impartial studies of the conditions in each of the great industries in the United States. Because *Market Control in the Aluminum Industry* (Harvard University Press, pp. xxi, 599, $5.00), by Donald H. Wallace, presents a detailed, intelligent, and impartial survey of the situation in one of the large industries, it is a welcome addition to the literature in this field. The author first gives a history of the aluminum industry, beginning with the patents under which it started during the latter part of the nineteenth century, and continuing with the rapid expansion of the industry through the stimuli afforded by the World War and the development of new alloys. Several reasons for the monopolistic situation in the aluminum industry are indicated. Patents protected the industry at first, but even after these expired competition failed to materialize. The few attempts which were made proved abortive. Although the Aluminum Company of America has had large holdings of water-power sites and bauxite deposits, it has not had a monopoly of these. The tariff has protected the company from foreign competition. Lack of technicians and scientific knowledge by outsiders has had a deterrent influence upon possible domestic competitors. Financial prestige of the company has been so impressive that it has probably discouraged others. Although the Aluminum Company of America has done little to prevent others from entering the field, it has engaged in a rapid and vigorous policy of expansion as soon as new opportunities for the use of aluminum appeared. Other interesting parts of the book cover an analysis of the extent to which monopoly in the field is economical; a study of the situation in the aluminum utensil manufacturing industry; and a summary of investigations and judicial proceedings by the federal government.—FORD P. HALL.

Professor Oliver P. Field offers thirty-eight possible subjects for research in his little brochure, *Research in Administrative Law—Scope and Method* (Social Science Research Council, pp. 48, $0.50). The list, while making no pretense to exhaustiveness, affords ample opportunity for subdivision and amplification, and gives suggestions for many years of profitable research activity by students and scholars in the field. On each general topic, possible methods of procedure and the sources that may be utilized are indicated. Much of the source material is of a strictly legal character, which doubtless a law-trained person can deal with best. The author does not, however, neglect the importance of study through

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observation and interview of the manner in which particular administrative agencies actually function. There is great need for sustained, directed, and unified research concerning the functions, methods, and accomplishments of administrative boards and commissions. Professor Field's little book should help attain this.—RAY A. BROWN.

On the occasion of the seventieth anniversary of the publication of the first volume of *Das Kapital*, an addition was made to the long list of Marxist publications in *Engels on Capital; Synopsis, Reviews, Letters, and Supplementary Material* (International Publishers, pp. ix, 147), translated and edited by Leonard E. Mins. As the title indicates, this small volume contains some of Engels' attempts to explain, summarize, and extend Marx's critique of capitalist economy—material which, in the main, has not heretofore been available to American readers. The central theme is, of course, the theory of surplus value as adapted by Marx to his purpose of disclosing in capitalist economy contradictions which would lead, by dialectical necessity, to the self-destruction of capitalism and its replacement by socialism. The book should prove of interest to specialists in socialist theory.—HENRY JANZEN.

The Civil War in the United States, by Karl Marx and Frederick Engels (International Publishers, pp. xxv, 325, $3.00), is a well-annotated and well-indexed collection of articles written in 1861–62 by Marx for the *New York Daily Tribune* and by Marx and Engels for the Vienna *Presse*, and selections from their correspondence in 1861–66. Marx and Engels must be given due credit for their anticipation of the present interpretation of the war as essentially a conflict between two opposing systems of production; but their comments can scarcely add anything to the detailed studies of such "liberal-bourgeois historians" as Beard and Cole, whom the editor, Mr. Richard Enmale, criticizes for a failure "to appreciate fully the class dynamics of historical development." The letters exchanged by Marx and Engels have some interest as illustrating once more their intimate collaboration, their zeal for detailed facts of all varieties, and their buoyant enthusiasm over the progress of revolution.—JOHN D. LEWIS.

Government in Action (Harcourt, Brace and Co., pp. xvi, 845, $1.84), by Robert E. Keohane, Mary Pieters Keohane, and Joseph D. McGoldrick, appears to have made good its claim to a functional approach. This senior high school text deals realistically with cases, historical and contemporary, economic and social as well as political, which should give the student a lively understanding of the major problems of American democracy. It is written for the "average student, or the slightly below

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average student," with suggestions for additional activities based on the text, the community, and the class-room library. The book is interesting and readable, and is one of the better texts in the new civics.—BURR W. PHILLIPS.

James Ford and Katherine Morrow Ford have made a direct attack on poverty at its source in *The Abolition of Poverty* (Macmillan Co., pp. 300, $2.50). In doing this, they have brought available literature up to date, provided keen analysis of the causes of poverty, and outlined procedures to be followed in solving this outstanding problem. They have not exaggerated the problem or the importance of any of its causes, though some of their solutions will be criticized as impracticable or visionary. Their aim has been high, possibly too high for the present stage in the development of government in America, but they have at least made it clear that poverty must be cured at its source and have indicated the general direction that must be followed if a desirable cure is to be found.—DANIEL B. CARROLL.

At a time when increasing attention is being given to the problem of training public employees, a study of the tools and techniques of training should prove valuable. John E. Devine's report to the Committee on Public Administration of the Social Science Research Council on *Films as an Aid in Training Public Employees* (pp. 113, $1.00) is of particular importance because the author has analyzed carefully the possibilities of projected pictures as a practical training device. He has made a thorough and critical study of the use of films for teaching purposes, not only in the training of public employees, but also in training employees of business organizations and for general educational purposes.—EDWIN O. STENE.

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RECENT PUBLICATIONS OF POLITICAL INTEREST
BOOKS AND PERIODICALS

CLYDE F. SNIDER
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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Housing and town planning, lectures, 1936–37; by Sir Raymond Unwin. Washington, 1937. ii leaves, 86 p. (Processed. Released by courtesy of Columbia University.) Free.

Civil Service Commission

Official register of the United States, 1937, containing list of persons occupying administrative and supervisory positions in legislative, executive, and judicial branches of Government, including the District of Columbia. Washington: Govt. Ptg. Off., 1937. 246 p. $1.00.

Congress

House of representatives. Anti-trust laws, with amendments, 1890–1937: 1, Sherman act; 2, Clayton act; 3, Federal trade commission act; 4, Export trade act; 5, Banking corporations authorized to do foreign banking business; 6, National industrial recovery act; 7, Price discrimination; comp. by Elmer A. Lewis. Washington: Govt. Ptg. Off., 1937. 78 p. 10c.

———— Civil service preference, retirement, and salary classification laws (Feb. 25–September 1, 1937); comp. by Elmer A. Lewis . . . Washington: Govt. Ptg. Off., 1937. 254 p. 20c.

Senate education and labor committee. Violations of free speech and rights of labor, report pursuant to S. Res. 266 (74th Congress), to investigate violations of right of free speech and assembly and interference with right of labor to organize and bargain collectively. Washington: Govt. Ptg. Off., 1937. pt. 3: 122 p. 10c.

Labor department

Labor standards division. Survey of labor law administration, state and federal action on health, safety, and employment standards, November, 1937. Washington, 1937. 18 leaves (processed). Free.

Library of Congress

Bibliography division. Chain stores, bibliographical list of recent writings; compiled by Anne L. Baden. September, 1937. Washington, 1937. 42 p. (processed) Free to institutions.

———— Trade unions. Bibliography of bibliographies of trade unions; compiled by Helen F. Conover, Oct. 1937. Washington, 1937. 20 p. (processed) Free to institutions.

———— List of speeches, etc., on Supreme Court issue as printed in Congressional Record, 75th Congress, 1st session, v. 81; compiled by Anne L. Baden. November 18, 1937. Washington, 1937. 29 p. (processed) Free to institutions. An extremely useful and complete list.

National emergency council

The Council has issued for many of the states a "Directory of Federal Agencies and Departments in . . . ," varying in size from about sixteen to sixty pages for each state. They are processed and issued free, in rather frequent new editions. They afford a convenient means of keeping track of government activities in the states.

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"Technology and Planning." (Digest of technological trends and national policy, including social implications of new inventions.) Washington: Govt. Ptg. Off., 1937. 10c.

"Population Statistics": 1, National data, material prepared for study of population problems. Oct., 1937. Washington: Govt. Ptg. Off., 1937. 107 p. 30c.

———— Same: 2, State data, material prepared for study of population problems. Washington: Govt. Ptg. Off., 1937. 67 p. 25c.

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———— Selected references on zoning, prepared as reference material for the national zoning conference held in Chicago, Illinois, December 13–14, 1937. Washington, 1937. (processed) 44 p. Free.

State department

American foreign service. General information for applicants and sample entrance examination questions. Washington. Govt. Ptg. Off., 1937. 79 p. Free.

Inter-American conference for maintenance of peace. Report of delegation of United States to . . . Washington: Govt. Ptg. Off., 1937. 280 p. 30c.

All but forty pages of this publication is taken up by appendices containing resolutions, addresses, draft resolutions, etc. It is more of a manual than a conventional report.

———— Good offices and mediation, treaty between United States and other American republics; signed Buenos Aires, Dec. 23, 1936, proclaimed September 16, 1937. Washington: Govt. Ptg. Off., 1937. 28 p. 5c. (Treaty series 925)

———— Order in international relations, address by Cordell Hull, secretary of state, at University of Toronto, Oct. 22, 1937. Washington: Govt. Ptg. Off., 1937. 5c.

———— *Historical adviser.* Georgia and the Federal Constitution, proceedings of state constitutional convention and proceedings of state legislature with respect to amendments proposed by Congress on Sept. 25, 1789, March 4, 1794, and Dec. 9, 1803 (with list of authorities); by Julia M. Bland. Washington: Govt. Ptg. Off., 1937. 38 p. 10c.

Works progress administration

Division of research, statistics, and records. Public welfare organization in the United States; a synopsis of opinion. Washington, 1937. 275 p. (mim.) Free.

This is a collection of excerpts from and digests of opinions of various people and institutions on the various aspects of the public administration of welfare organizations in the United States. It is a thorough presentation of one aspect of state government.

STATE AND TERRITORIAL

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CONNECTICUT

Secretary of state. Register and manual, 1937, Hartford, 1937. 658 p.

GEORGIA

Institute of public affairs. Proceedings . . . eleventh annual session, Athens, Georgia, 1936–37. Part I. World and national problems. Part II. State and local problems: Public health. Athens, 1937. 2 v.: pt. 1, $1.50; pt. 2, 75c.

ILLINOIS

State committee on citizenship and naturalization. Citizenship and naturalization in the United States. Springfield, 1937. 145 p.

This is a most unusual and interesting manual, issued under the direction of Avinere Toigo (executive secretary of the committee), of citizenship and naturalization activities of the various states. There is a bibliography.

Champaign county, Illinois regional planning commission. A regional planning commission for Champaign county, Urbana, 1937.

Chicago municipal reference library. Check-list of publications issued by local governing bodies in Chicago and Cook county. V. 1, nos. 1–7, 1936; V. 2, nos 1–12, 1937.

INDIANA

State Library. Bibliography of books, pamphlets, clippings, and periodicals in the Indiana state library on the 1937–1938 high school debate subject: Resolved, That the several states should adopt a unicameral system of legislation. Compiled by Helen Rogers, October 18, 1937. Indianapolis, 1937. 13 leaves (mim.) Free.

IOWA

State planning board, Ames. Various subdivisions of this board have made studies of traffic problems in Iowa, and have issued a compilation of traffic regulations in thirteen Iowa cities; traffic flow and accident analysis, Cedar Rapids, Iowa: traffic flow and accident analysis, Council Bluffs, Iowa, and for other Iowa cities.

These publications vary in size from about sixteen to sixty pages, and are free.

———— *University of Iowa, Iowa City. Bureau of business research.* Homestead tax reduction in Iowa, by C. Woody Thompson and Verle McElroy. Iowa City, 1937. 89 p. (Iowa studies in business, no. 17). $1.00.

KANSAS

Legislative council, Research department. Cost of government in Kansas. Topeka, 1937. 5 p. (mim.) Free.

———— State administrative reorganization; summary of departmental reorganization. Preliminary report. Topeka, 1937. 18 p. Free. (mim.)

MARYLAND

Historical society, Baltimore. Archives of Maryland . . . v. 53–54: Proceedings of the county court of Charles county, 1658–1666, and manor court of St. Clement's Manor, 1659–1672. Proceedings of the county courts of Kent, Talbot, and Somerset counties. Court series 6 and 7. Baltimore, 1936–1937. 2 v.

MICHIGAN

University of Michigan, Ann Arbor. Bureau of government. Permanent registration of voters in Michigan; an appraisal, by James K. Pollock. Ann Arbor, The

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Horace H. Rackham School of Graduate Studies, University of Michigan, 1937. 15 p.

———— Realty tax delinquency in Michigan, by Robert S. Ford, Ann Arbor, The Horace H. Rackham School of Graduate Studies, 1937. 125 p.

MINNESOTA

University of Minnesota, Minneapolis. Peace or war? A conference at the University of Minnesota . . . edited by Harold S. Quigley. Minneapolis, 1937. 205 p. 50c.

NEW JERSEY

Commission on interstate coöperation. Report no. 3, January, 1938. 63 p.

This consists of a small report and two large appendices, and gives an interesting account of how interstate coöperation is accomplished. Attention is called to the report of the New York joint legislative committee on interstate coöperation, which in its 223 pages includes reports of committees and subcommittees on parks, conservation, Delaware River basin, Ohio River basin, crime, social security, etc. Free.

NEW YORK

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TEXAS

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Relaciones exteriores, Ministerio de. Proyecto de convencion sobre dereche de Asilo. Buenos Aires, 1937.

———— Traité general pour developper les moyens de conserver la paix. Buenos Aires, 1936.

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Pressedienst. Österreichs erneuerung . . . die reden des bundeskanzlers, Dr. Kurt Schuschnigg. Bd. 2. Vienna, 1936.

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Trabaja, pervision social, higiene y sanidad, Ministerio de. Organizacion del ministerio . . . y sus dependencias. La Paz, 1937.

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Archives. La collection Elgin-Gray, 1846–1852, ed., avec notes et appendices par Sir Arthur G. Doughty. Ottawa, J. O. Patenaude, 1937. 2 v. in 4.

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Delegation to the League of nations. Japanese aggression and the League of nations. 1937. 2 v. (n.p.)

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Foreign office. Final act, convention, and other documents regarding the abolition of the capitulations in Egypt. Montreux, May 8, 1937. London, H.M.S.O., 1937. 72 p. (Cmd. 5630). 1s. 3d.

Home office. Standard clauses to give effect to the recommendations of the committee on common form clauses appointed by the chairman of ways and means. London, H. M. S. O., 1937. 90 p. 10s. 5d.

This is intended as an aid to legislative bill-drafting.

Palestine royal commission. Report, July, 1937. London, H.M.S.O., 1937. 404 p., maps, charts. (Cmd. 5479). 6s. 6d. This is the highly controversial report on the Palestine question.

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CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

Division of international law, Washington. International legislation; a collection of the texts of multipartite international instruments of general interest. Edited by Manley O. Hudson, with the collaboration of Ruth E. Bacon. v. VI, 1932–1934, numbers 304–401. Washington, 1937. 986 p.

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Handbook of international organizations (associations, bureaux, committees, etc.) Geneva, 1938. 491 p. (1937 XII.B4)

Sino-Japanese conflict. Appeal by the Chinese government. Geneva, 1937. 59 p. Official Journal, Special supplement no. 177.

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